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In The

Supreme Court of the United States

ST. LUKE'S OF THE MOUNTAINS ANGLICAN CHURCH IN LA CRESCENTA, *ET AL.*,

Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. A separately incorporated local church's directors and members voted to end the corporation's affiliation with a religious denomination. Does a state violate the First Amendment's Establishment and Free Exercise Clauses by affording unique rights to denominations – unavailable to secular persons – to self-create a trust in the local church corporation's real property and to seize corporate control of the local church?

2. Should a uniform balance of First Amendment Free Exercise and Establishment Clause concerns govern church property and governance disputes, or are states free to strike their own balances as to what the First Amendment mandates or permits, creating conflicting rules ranging from absolute deference to denominational wishes to application of neutral secular law principles?

3. Does dicta in *Jones v. Wolf*, 443 U.S. 595 (1979) that "the constitution of the general church can be made to recite an express trust in favor of the denominational church" as a means by which "the parties can ensure, if they so desire" general church control over local church property, give religious denominations a federal constitutional right to self-settle trusts over that property?

PARTIES

Petitioners: St. Luke's of the Mountains Anglican Church in La Crescenta, a California nonprofit religious corporation (formerly known as St. Luke's of the Mountains Episcopal Church in La Crescenta); Rev. Dr. Ronald W. Jackson; Burt Lehman; Ted Brenner; Mary Crosby; Dave De Vos; Alicia Greeley; Don Gunn; Debbie Kollgaard; Bob Lindstrom; Sue Ray; and Lori Richardson.

Respondents: The Protestant Episcopal Church in the Diocese of Los Angeles, a California nonprofit religious corporation; Right Rev. J. Jon Bruno; Right Rev. Sergio Carranza; Patricia Huber; and The Episcopal Church, an unincorporated association.

CORPORATE DISCLOSURE STATEMENT

Petitioner St. Luke's of the Mountains Anglican Church in La Crescenta is a California nonprofit religious corporation with no parent corporation or stock.

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CITATION TO OPINIONS BELOW

The orders of the Superior Court granting summary judgment for Respondents and denying Petitioners' motion for summary judgment are unpublished, but are reprinted in the Appendix ("App.") 37-46.

The opinion of the California Court of Appeal affirming the trial court judgment is reported in *Huber v. Jackson*, 175 Cal. App. 4th 663, 96 Cal. Rptr. 3d 346 (2009). App. 1-36. The California Supreme Court denied review on September 17, 2009. App. 47. There is no official citation to that order. *See* http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfmdist=0&doc_id=1916495&doc_no=S175401.

BASIS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) on the ground that Petitioners contend that both (1) California Corporations Code section 9142(c), as interpreted by the California courts, and (2) California Corporations Code section 9150 and a judicial decision allowing a religious denomination special rights under law to replace properly elected corporate directors at will are repugnant to and deny Petitioners' rights guaranteed by the Establishment and Free Exercise Clauses of the First Amendment of the United States Constitution as applied to the states by the Fourteenth Amendment. Jurisdiction also exists under 28 U.S.C. § 1257(a) to review the decision of

the California Court of Appeal, which became final after discretionary review was denied by the California Supreme Court.

This Petition is timely filed under Supreme Court Rule 13(1), within ninety days from the California Supreme Court's denial of review on September 17, 2009.

Pursuant to Supreme Court Rule 14(e), Petitioners provide the following specific information:

(i) The California Court of Appeal rendered its decision on June 9, 2009; after a timely petition to the California Supreme Court, the California Supreme Court denied review on September 17, 2009.

(ii) No rehearing was sought from the California Supreme Court; the California Court of Appeal denied rehearing on July 1, 2009.

(iii) Rule 12.5 considerations: Not applicable to this Petition.

(iv) Statutory provision conferring jurisdiction: 28 U.S.C. § 1257(a).

(v) Rule 29.4 statement: This Petition questions the constitutionality of a statute of the State of California, and therefore 28 U.S.C. § 2403(b) may apply. Petitioners will serve a copy of this Petition on the Attorney General of the State of California.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the Constitution of the United States provides, in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . .

California Corporations Code section 9142 states, in relevant part:

> (c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:
>
> > (1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.
> >
> > (2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.
> >
> > (3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.

> (d) Trusts created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments creating the trusts. However, nothing in this subdivision shall be construed to permit the amendment of the articles to delete or to amend provisions required by Section 214.01 of the Revenue and Taxation Code to a greater extent than otherwise allowable by law.

California Corporations Code section 9150 provides, in relevant part:

> (a) "Bylaws," as used in this part means the code or codes of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

INTRODUCTION

In the changing world of religious diversity, legal disputes between local churches and broader denominations with which they were formerly affiliated have become commonplace throughout the states. On matters of property ownership and governance of secularly recognized entities, states must determine disputants' legal rights. The First Amendment, made applicable to the states by the Fourteenth Amendment,

undeniably sets limits on states' intervention in such disputes. On that much, all parties agree.

The law regarding those First Amendment limits, however, is in disarray, dramatically varying from state to state. In a very real sense, on this subject the First Amendment today means different things in different states. The constitutional conflict stems primarily from radically different views adopted by various state courts of last resort over the meaning and implications of this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979). The issue has exploded to the forefront of judicial and public attention in recent years and will not go away. There have been at least three divergent and final decisions by state courts of last resort in the last year alone.

This case is a prime example – and one involving both a property dispute and a corporate governance dispute – of the disparity in the interpretation of the First Amendment across the country. The California courts, construing this Court's precedent and state statutes supposedly under "neutral principles of law," have authorized a religious denomination to seize (by imposition of a unilaterally created "trust") property held expressly "free of any trust" solely in the name of a legally separate local church corporation, and to unilaterally displace the properly elected directors and to disenfranchise the votes of voting members of that corporation through extra-corporate means.

Illuminating the conflict between the states, had this same case arisen in South Carolina, the result

would have been different, even though both disputes involve the same denomination making the same claims of superiority over secular law. Just three months ago, the South Carolina Supreme Court, in essentially the same factual setting, came to the opposite conclusion as California, not because of differences in state property law or corporate governance rules, but because of different interpretations of what the First Amendment requires. The current hodgepodge of rules and governing standards in this area exists not because of substantial differences in state law, but because *state* courts of last resort have been left to make independent and differing balances of core First Amendment Free Exercise and Establishment Clause values based on widely disputed language in *Jones*.

This Court should grant certiorari to provide definitive guidance as to the First Amendment limits that apply to the states in determining church property and corporate governance disputes.

STATEMENT OF THE CASE

A. St. Luke's Separate Incorporation, Identity and Property Ownership.

Since its incorporation in 1940, St. Luke's of the Mountains Anglican Church in La Crescenta ("St. Luke's") has been a separate and self-governing California nonprofit religious corporation. App. 4. St. Luke's holds record title to its real property in its

own name, and at all times has been governed by a board of directors elected by members of the corporation. App. 2-3, 5, 18.

St. Luke's corporation was spiritually affiliated with the Episcopal Diocese of Los Angeles ("Diocese"), which itself is part of the larger Episcopal Church, in turn a part of the worldwide Anglican Communion of churches historically descended from the Church of England. The original articles of incorporation of St. Luke's stated that the Constitution and Canons of the Episcopal Church and of the Diocese "*for the time being*, shall, *unless they be contrary to the laws of this State*, always form a part of the By-Laws, Ordinances, Constitution and Articles of Incorporation of [St. Luke's] corporation." App. 4 (emphasis added).

St. Luke's first parcel of property was donated before incorporation through the Diocese of Los Angeles. App. 5. Once St. Luke's had incorporated, the Diocese conveyed the property for consideration to St. Luke's by grant deed expressly "for the purpose of vesting legal title, now held by [Grantor] in trust for the Grantee, in the Grantee absolutely and free of any trust." App. 20, fn. 4, 102. St. Luke's subsequently acquired additional parcels of property in its own name. App. 5.

In 1940, neither the Constitution and Canons of the Episcopal Church nor those of the Diocese contained any provision purporting to state any trust interest in the denomination's favor with respect to

the property of St. Luke's. App. 5-6. At no time did St. Luke's ever expressly convey or record a trust interest in favor of the Episcopal Church or the Diocese.

B. The Episcopal Church's So-Called Dennis Canon.

In 1979 – almost forty years after St. Luke's incorporation – the Episcopal Church purported to enact a "canon" (or internal rule) supposedly creating a trust in favor of the denomination with respect to the real property owned by affiliated local churches. This internal rule, Canon I.7.4 (known as the "Dennis Canon"), states that "all real and personal property owned by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located." App. 6. The Canon does not describe any specific property or have effect while a parish is still affiliated with the Episcopal Church. *Id.* St. Luke's never expressly assented to the Dennis Canon and never took any of the usual, secular steps to create a trust in its property, such as executing a written instrument identifying the property and beneficiary.

C. St. Luke's Ends Its Affiliation With The Episcopal Church.

In 2003, well before the present dispute arose, the board of directors of St. Luke's amended its

bylaws to state that the canons of the denomination were "instructive only." App. 7. Neither the Diocese nor the Episcopal Church objected to this amendment.

In 2006, for reasons that are not relevant here, the board and members of St. Luke's overwhelmingly resolved to end the corporation's affiliation with the Diocese and the Episcopal Church, and to affiliate instead with a different branch of the worldwide Anglican Communion. St. Luke's then amended its articles to reflect the new affiliation, following state law corporate procedures for doing so. App. 7.

D. The Present Litigation Results in Summary Judgment for Respondents.

In response to St. Luke's change of Anglican affiliation, the Diocese, two of its bishops, and one *quondam* lay member sued St. Luke's and its board, seeking a declaration that the Diocese owned all real and personal property of St. Luke's as well as controlled the corporate form of the church. The Episcopal Church intervened, asserting essentially the same claims. App. 8.

St. Luke's, on the one hand, and the Diocese and Episcopal Church, on the other, filed cross-motions for summary judgment. St. Luke's specifically argued that *Jones v. Wolf* did not constitutionally require civil enforcement of the Dennis Canon or the Diocese's declarations concerning St. Luke's corporation. App. 50-54. In so doing, St. Luke's argued for a

"neutral principles of law" approach that would treat church property and corporate disputes the same as nonreligious property and corporate disputes. App. 58-62.

On July 3, 2007, the Superior Court of California for Los Angeles County denied St. Luke's motion, and granted the motions by the Diocese and Episcopal Church. App. 45-46. On July 26, 2007, the Superior Court entered judgment for the Diocese and Episcopal Church on all claims. App. 37-44.

E. The California Court of Appeal Holds That Respondent Denomination Possessed Unique Rights to Create Beneficial Property Ownership and to Control the Local Corporation; California Supreme Court Denies Review.

St. Luke's timely appealed to the California Court of Appeal, again arguing that the First Amendment barred the denomination's usurpation of its property and corporate governance rights. App. 65-71, 80-81, 84-86. The California Court of Appeal expressly applied the First Amendment. App. 11. Following the California Supreme Court's decision in *Episcopal Church Cases*, 45 Cal. 4th 467, *cert. denied sub nom.*, *Rector, Wardens & Vestrymen v. Protestant Episcopal Church*, 130 S. Ct. 179 (2009), the court of appeal held that Respondents, as "superior religious bodies" and "general churches," were empowered by California Corporations Code section 9142(c) and this Court's decision in *Jones v.*

Wolf to create a beneficial trust ownership interest for themselves in Petitioners' real property through an internal rule, the Dennis Canon, even absent express ratification of the purported rule by the separately-incorporated local church. App. 15-19.

The California Court of Appeal further held that Respondents had extra-statutory corporate governance rights over the St. Luke's corporation based on their religious affiliation, such that they could remove corporate directors at will, and that any attempted corporate director vote to disaffiliate was a nullity, in effect disenfranchising the overwhelming vote of the corporate members to change Anglican affiliation. App. 23-24, 31-32.

St. Luke's sought review by the Supreme Court of California. It specifically framed one of the issues for review as follows: "Does the First Amendment to the United States Constitution, incorporated into the Fourteenth Amendment to the United States Constitution, permit state courts to endow religious denominations with a special ability to override the rights and powers of a separate religious corporation?" App. 96.

On September 17, 2009, the California Supreme Court denied review. App. 47.

REASONS FOR GRANTING THE WRIT

I. This Court's Open-Ended Precedents, Including *Jones v. Wolf*, Have Engendered an Array of Conflicting Decisions of State Courts of Last Resort Regarding Federal First Amendment Dictates Governing the Determination of Local Church Property and Corporate Governance Disputes, Creating a Patchwork of Constitutional Standards.

In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court commended a "neutral principles of law" approach to resolving property disputes between religious denominations and local churches as consistent with the First Amendment. *Id.* at 602-03. However, *Jones* did not expressly disavow the application of the so-called "deference to hierarchy" approach to such property disputes, under which the First Amendment bars judicial or other governmental involvement in church ecclesiastical disputes. *See Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Watson v. Jones*, 80 U.S. 679 (13 Wall.) (1871).

The result has been a plethora of standards amongst the states, not only about how to determine church disputes over secular matters such as property ownership and control of secularly recognized independent corporate entities, but over what standards the First Amendment either mandates or allows. Conflicting state court First Amendment interpretations range from pure "neutral principles of law" approaches in which religious entities are

treated just like secular ones, with no distinction between (or legal preference for) any particular type of entity (e.g., denomination versus local church; "hierarchical" versus congregational church), to pure "deference to hierarchy" approaches where a denomination automatically wins by asserting that it is a hierarchical church entitled to deference, and that therefore it has the rights, vis à vis a local church, of an absolute monarch.

The conflict is not limited to different policy decisions being made by state courts or state legislatures, as is permitted in our federal system, but rather involves radically different interpretations of what the Constitution compels, permits and prohibits. The result, as we now discuss, is that the First Amendment now means different things in different states.

A. "Neutral principles of law" is the modern and preferred First Amendment rule for resolving church property and corporate control disputes.

Following the majority's approach in *Jones v. Wolf*, on one end of the spectrum are states that apply neutral principles of law. Under this approach, religious actors are treated no differently than secular entities with no distinction between denomination and local church, or "hierarchical" or congregational church structure, or any of the endless variations between these endpoints.

This view is most recently exemplified in *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, No. 26724, 2009 S.C. LEXIS 462 (S.C. Sept. 18, 2009).[1] There, just this year, the South Carolina Supreme Court addressed claims nearly identical to those at issue here – assertions by the very same Episcopal Church denomination that it had special rights in the property held by and the corporate governance of a legally separate local church corporation. The South Carolina Supreme Court held that "where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so." *Id.* at *21.

Applying such neutral legal principles, the South Carolina Supreme Court held that because secular persons have no right to unilaterally create trusts in their favor over property that they do not own, a religious entity could not do so either. *Id.* at *28-*29. It further held that, as a corporate stranger, the denomination had no right to supersede decisions (including the decision to disaffiliate from the denomination) undertaken by a majority of duly elected corporate directors and a supermajority of corporate members. *Id.* at *30-*33. Thus, there is no doubt *that as a matter of First Amendment*

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[1] The decision does not appear to be officially reported at the present time, and bears the notice that "THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED."

jurisprudence the result in this case – on nearly identical issues – would have been completely different had it arisen in South Carolina rather than California.

The Supreme Courts of Louisiana and Alabama, and an intermediate appellate court in Illinois all agree that the neutral principles approach is constitutionally compelled. *Fluker Cmty. Church v. Hitchens*, 419 So. 2d 445, 447 (La. 1982) ("the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment and in [the nearly identical provision found in Art. I, § 8 of the Louisiana Constitution] *necessitate . . . adoption of the 'neutral principles' approach*" (emphasis added)); *Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So. 2d 861, 866 (Ala. 1979) ("the courts *must* decide the property disputes by looking at so-called 'neutral principles of law' and not resolve the underlying controversies over religious doctrine" (citing *Presbyterian Church v. Hull*, 393 U.S. 440, 449 (1969)) (emphasis added)); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 716, 719 (Ill. App. Ct. 1984) ("where the litigation involves only the issue of property control, the *Watson* [hierarchical deference] standard fails as a constitutional imperative"). Such holdings are not surprising, given this Court's acknowledgment in *Jones* that applying a "rule of compulsory deference" "would appear to require 'a searching and therefore impermissible' inquiry into church polity.'" *Jones*, 443 U.S. at 605 (quoting

Milivojevich, 426 U.S. at 723); *see also Maryland & Virginia Eldership of Churches of God v. Church of God*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine").[2]

This constitutionally mandated commitment to applying neutral legal principles – the same principles that would govern secular actors – applies equally to questions of corporate governance. *All Saints Parish Waccamaw*, 2009 S.C. LEXIS 462 at *30-*33 (addressing both property ownership and corporate control); *Trinity Presbyterian Church*, 374 So. 2d at 866 (neutral secular legal principles govern "issues of property rights and the constituency of a legal entity created by statute").

Other state courts have recognized "that the majority opinion in *Jones* expressed a clear preference for the neutral principles approach over the

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[2] For a particularly thoughtful analysis of why the neutral principles of law approach is constitutionally mandated whenever there is an "absence of clear expressions" in the governing church documents about the right of a local church to withdraw its affiliation, about the disposition of property in such a case, and about who is authorized to make such determinations, *see Protestant Episcopal Church in Diocese of N.J. v. Graves*, 417 A.2d 19, 25-31 (N.J. 1980) (Schreiber, J., dissenting).

polity [hierarchical deference] approach" although perhaps not *requiring* it as a constitutional matter. *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 94-95 (Colo. 1986) (en banc); *accord, e.g., Arkansas Annual Conf. of AME Church, Inc. v. New Direction Praise & Worship Ctr., Inc.*, 375 Ark. 428, 435, *cert. denied*, 130 S. Ct. 70 (2009) ("courts must settle the [property] dispute by applying neutral principles of law," including the general principle in most states that trust interests can only be created by the trustee, not unilaterally by the purported beneficiary of the trust); *Berthiaume v. McCormack*, 153 N.H. 239, 891 A.2d 539 (N.H. 2006); *St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conf. of United Methodist Church, Inc.*, 145 P.3d 541, 551 (Alaska 2006); *Bjorkman v. Protestant Episcopal Church in U.S. of Am. of Diocese of Lexington*, 759 S.W.2d 583, 585 (Ky. 1988); *Piletich v. Deretich*, 328 N.W.2d 696, 700 (Minn. 1982).[3]

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[3] *See also Arkansas Presbytery of Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301, 339 (Ark. 2001); *East Lake Methodist Episcopal Church, Inc. v. Trustees of the Peninsula-Delaware Annual Conf. of United Methodist Church*, 731 A.2d 798, 808 (Del. 1999); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005); *Graffam v. Wray*, 437 A.2d 627, 634-35 (Me. 1981); *Babcock Mem'l Presbyterian Church v. Presbytery of Balt. of United Presbyterian Church in U.S.*, 464 A.2d 1008, 1016 (Md. 1983); *Fortin v. Roman Catholic Bishop of Worcester*, 625 N.E.2d 1352, 1356-57 (Mass. 1994); *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 206 (Miss. 1998); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465, 467 (Mo. 1984) (en banc); *First Presbyterian Church of Schenectady v. United Presbyterian*

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B. Some states still cling to the outdated *Watson* deference to hierarchy approach for ecclesiastical determinations as a constitutionally compelled rule for resolving church property and corporate control disputes.

At the other end of the spectrum are states that treat property and corporate disputes that could be resolved based on neutral state law principles as ecclesiastical in nature, thus holding that deference to a hierarchical church is constitutionally compelled, even after *Jones v. Wolf*. *Church of God of Madison v. Noel*, 318 S.E.2d 920, 923 (W. Va. 1984) (in a church property dispute, "[w]here the proper hierarchical authority has decided a question of church doctrine, practice or government, the courts *must decline* to intervene" (emphasis added)); *id.* at 924 (Miller, J., dissenting) (noting that the majority opinion suggests "that once a court finds a church to be hierarchical in structure, it must defer to the decision of the church's highest tribunal"); *Protestant Episcopal Church in Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980) ("Only where no hierarchical control is involved, should the neutral principles of law principle be called into play");[4] *cf. Parish of the Advent v.*

Church in U.S., 464 N.E.2d 454, 459-60 (N.Y. 1984); *Presbytery of Beaver-Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church*, 489 A.2d 1317, 1323 (Pa. 1985); *Foss v. Dykstra*, 319 N.W.2d 499, 500 (S.D. 1982).

[4] The Third Circuit has subsequently noted that the New Jersey Supreme Court may have moved away from that position,

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Protestant Episcopal Diocese of Mass., 688 N.E.2d 923, 932-33 (Mass. 1997) (holding that a dispute between factions of the local church over control of the local corporation and its property does not permit a *Jones*-type neutral principles analysis); *Presbytery of Cimarron v. Westminster Presbyterian Church*, 515 P.2d 211, 216-17 (Okla. 1973) (pre-*Jones*, the "Court is not free" to apply a neutral principles of law approach once a local church has affiliated with a national, hierarchical church).[5]

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citing dicta in *Elmora Hebrew Ctr., Inc. v. Fishman*, 593 A.2d 725, 729-30 (N.J. 1991), that neutral principles *may* be employed, where appropriate, "[w]ithout regard to the governing structure of a particular church." *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 92-93 (3rd Cir. 1996).

[5] Several other state courts apply the hierarchical deference approach as preferred, though not necessarily constitutionally mandated. *See*; *e.g.*, *Mills v. Baldwin*, 362 So. 2d 2, 6-7 (Fla. 1978), *reinstated after remand*, 377 So. 2d 971 (Fla. 1979) (applying *Watson's* hierarchical deference approach even after GVR following *Jones*); *Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church v. Branstetter*, 824 S.W.2d 417, 418-19 (Ky. 1992); *Tea v. Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182, 184 (Nev. 1980) (held PECUSA is hierarchical, so property belonged to diocese).

C. California's approach purports to use neutral principles of law, but creates special statutory or judicially created First Amendment privileges favoring certain religious denominations.

California now follows a hybrid approach that uses the language of neutral legal principles but, in fact, grants special privileges to certain religious groups, in particular religious denominations that can convince a court of their supposed "hierarchy." In *Episcopal Church Cases*, *supra*, the California Supreme Court purported to adopt a "neutral principles of law" approach while in fact giving deference to the claims of the denomination. *Episcopal Church Cases*, 45 Cal. 4th at 486. It thus adopted a hybrid approach of purporting to use a neutral principles analysis but at the same time creating special rights for certain religious denominations, by interpreting a state statute – California Corporations Code section 9142(c) – to empower religious denominations who are "superior religious bodies" or "general churches" to unilaterally impose trusts in their own favor over real property owned by separately incorporated, affiliated local churches, even though such a rule would be in conflict with longstanding and generally applicable trust law that only the owner of real property can create a trust in it expressly and in writing. *See* California Probate Code § 15206.[6]

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[6] The New York Court of Appeals has adopted a similar "neutral principles in name, denominational preference in

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California Supreme Court Justice Kennard, concurring and dissenting, pointed out the reality that although using the words of neutral legal principles, California, in fact, was engaging in a display of "unbridled deference" to the denomination, although she thought that the First Amendment permitted such a civil law preference as between one religious group (the denomination) over another (the local church corporation) in a property dispute. *Episcopal Church Cases*, 45 Cal. 4th at 495 (Kennard, J., concurring and dissenting). Justice Kennard stated: "If a neutral principle of law approach were applied here, the Episcopal Church might well lose because . . . the Episcopal Church's 1979 declaration that the parish was holding the property in trust for the Episcopal Church is of no legal consequence [under normal California property law]." *Id.* But section 9142(c), as interpreted by the California Supreme Court, "allows a hierarchical church, such as the Episcopal Church here, through its bylaws, to unilaterally impose a trust on the property of a local member parish. The statute does not state a neutral principle of law; rather, it creates a special principle applicable solely to religious corporations." *Id.* at 496.

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practice approach." Purportedly applying neutral principles of law, it found "nothing in the deeds," "certificate of incorporation" of the local church, or state statutes that established an express trust in favor of the denomination. Nonetheless, it gave "dispositive" weight to self-generated denominational rules. *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 924-25 (N.Y. 2008).

In addressing property ownership issues, the California Court of Appeal here hewed to its Supreme Court's contemporaneous decision in *Episcopal Church Cases*.[7] App. 19-20.

The California Court of Appeal in this case went one step further, though, in turning away from application of neutral legal principles and thus providing certain religious groups with preferences under law. Purporting to apply "neutral principles of law," it held that notwithstanding the statutory right of a religious corporation to amend its articles of incorporation and corporate bylaws (*see* Cal. Corp. Code §§ 5810(a), 9150(b), 9620(a)), the corporate directors of St. Luke's were implicitly forbidden from amending the corporate bylaws to have the corporation affiliate with another branch of the Anglican church. App. 29. It did so even though California's statutory scheme vests religious corporation governance *solely* in the hands of the local corporation's board of directors and members, not corporate outsides. *E.g.*, Cal. Corp. Code §§ 9140, 9210, 9222(a). There is no dispute that in 2003 the corporation's directors amended its bylaws to make the denomination's canons "instructive only but not binding"

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[7] Although a petition for a writ of certiorari in *Episcopal Church Cases* was denied by this Court earlier this year, the California Supreme Court's decision was rendered in a preliminary procedural posture of the case; no final judgment was entered and the case is currently pending in the lower California courts on remand. In contrast, the decision in the case *sub judice* is unquestionably final.

(App. 7), yet the court of appeal gave short shrift to that amendment under so-called "neutral" legal principles. App. 29.

Thus, the California Court of Appeal held that the denomination ruled supreme regardless of the state statutory scheme:

> [W]hen defendants voted for disaffiliation, they denounced their prior promises to be subject to the governing documents of the national church and the diocese, abandoned their membership in the corporation, and lost the power and authority to be directors of the corporation, as they were no longer members in good standing of the Episcopal Church.[8]

App. 32. Following its own prior decision in *New v. Kroeger*, 167 Cal. App. 4th 800 (2008), *rev. denied & opinion ordered republished*, 202 P.3d 1089 (2009), the court found that religious corporations are inherently different and that "'[t]he corporation is a subordinate factor in the life and purposes of the church proper.'" App. 31.

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[8] This also raises an analytical "chicken before the egg" problem that could have been avoided under a truly neutral approach. At the moment the directors voted to end the corporation's affiliation with the Episcopal Church, under state statutes the corporation was no longer subject to Episcopal rules, so the directors could not have abandoned their membership in the *corporation* by merely voting. Therefore, the court appears to have enforced one party's notions of Episcopal loyalty, where the mere "disloyal" thought process preceding a vote is enough to eject a corporate director from his or her seat.

Accordingly, in the present case, as in *Episcopal Church Cases*, California turns "neutral principles of law" on its head, morphing it into judicial enforcement of and preference for non-doctrinal proclamations of certain denominations, where neutral state laws would command a different result, thus effectively allowing any self-proclaimed hierarchical church to seize from affiliated churches property they do not own and to take over local church corporations where they do not vote or hold office.

D. The conflicting state interpretations of where to draw the line between the First Amendment's Free Exercise and Establishment Clauses can only be resolved by this Court, not fifty different states acting independently of each other.

The judicial landscape, thus, is littered with differing and conflicting rules for determining church property and corporate governance disputes. In all instances, the conflicting rules claim to be consistent with the First Amendment; in many instances, courts assert they are compelled by the First Amendment even though the rules are at odds with other rules also compelled by the First Amendment.

To one degree or another, the decisions resulting in judicial enforcement of denominational dominance in either self-declared or judicially-perceived hierarchical church structures draw sustenance from the dissenting opinion in *Jones*. The *Jones* dissent

contended that the neutral principles approach leads to "indirect interference by the civil courts with the resolution of religious disputes within the church [that] is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice." *Jones*, 443 U.S. at 613 (Powell, J., dissenting). Such approaches, though, create their own problems, not the least of which is that the various parties – denomination, local church, and adherents – may have significant disagreements about whether the religious entity is "hierarchical" or not, and if so, how.

By contrast, the *Jones* majority opinion noted that "even in *Watson*, in which the hierarchical deference approach was adopted, the Court declared that, regardless of the form of church government, it would be the 'obvious duty' of a civil tribunal to enforce the 'express terms' of a deed, will, or other instrument of church property ownership." *Jones*, 443 U.S. at 603 n.3 (quoting *Watson*, 80 U.S. (13 Wall.), at 722-23). Courts using a deference approach to resolve property and corporate disputes have seemingly not followed this distinction in *Jones* and *Watson*, or they have allowed the self-serving arguments of denominations – that almost always couch a property or corporate dispute that could be resolved under neutral state laws as being ecclesiastical in nature, thus triggering deference – to carry the day.

The undoubtedly disparate approaches in these church property and corporate governance cases reflect a fundamental tension between the First

Amendment's Free Exercise and Establishment Clauses, a tension that only this Court can definitively address. On the one hand, denominations, such as Respondents here, assert that they should have a Free Exercise right to a free hand in determining property and governance rights between themselves and affiliated local churches, regardless of how state laws might otherwise determine the outcome for non-religious parties. *See, e.g.*, *Episcopal Church Cases*, 45 Cal. 4th at 489 ("[r]espect for the First Amendment free exercise rights of persons to enter into a religious association of their choice . . . requires civil courts to give effect to the provisions and agreements of that religious association").

By contrast, Petitioners and thousands of local churches around the nation, who have sacrificially contributed to build their churches over many decades, believe that they too have a Free Exercise right to determine if and when they wish to follow a different path for their congregants, and that they should be able to determine their religious future without being subject to special rules favoring denominations with rights and privileges not afforded to secular persons. This is especially true where the local church is separately incorporated, and where, as here, the denomination has insisted that the local church own and hold property in its own name to free the denomination from the burdens and liabilities associated with property ownership.

At the same time, state rules that favor denominations in disputes over property or corporate

control with legally separate local church corporations – whether denominated as deference to hierarchy or "neutral principles" with special provisions for religious entities – inevitably trigger Establishment Clause concerns. The practical fact remains that such rules allow denominations – such as Respondents here – to use the judicial machinery of a state to seize the real property and corporate control of legally separate local church entities that wish to exercise their religious freedom to affiliate elsewhere. As the Kentucky Supreme Court recognized in a slightly different context, deference doctrines, be they express or under the guise of supposedly neutral principles with special pro-denomination rules, become a method by which certain religious groups can simply force a "win" in every case, making courts the enforcers of religious edicts. *Bjorkman v. Protestant Episcopal Church*, 759 S.W.2d 583 (Ky. 1988). Deference or other pro-denomination rules mean that "in every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization." *Id.* at 586.

To the extent that *Jones* recognized the First Amendment as approving *both* a pure secular neutral principles standard *and* judicial rules providing preferences to certain denominations, the last thirty years has established that this, in practice, means not

just different state rules but a different First Amendment in different states.[9]

The conflicting deference to hierarchy, neutral legal principles, and special preferences for denominations in the guise of neutral principles approaches do not reflect differing state law concepts of property or corporate rights. Rather, they reflect differing *balances*, state by state, of fundamental First Amendment Free Exercise and Establishment Clause interests. That conflict has been brought into sharp contrast only this year with the highest courts in California and South Carolina reaching opposite conclusions about the very same church trust "rule" in the same Episcopal denomination.

Across the country, the jurisprudential framework of the First Amendment's dictates and limits as to these church property and corporate governance disputes is in disarray. This conflict is crying out for resolution as the religious diversity of our nation has exploded since *Jones* was decided, resulting in rapidly

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[9] *Cf. Larkin v. Grendel's Den*, 459 U.S. 116 (1982) (state statute "vest[ing] in the governing bodies of churches . . . the power effectively to veto applications for liquor licenses within a 500-foot radius of the church . . . " improperly conferred a unique and sweeping power on churches); *Larson v. Valente*, 456 U.S. 228 (1982) ("statute, imposing certain registration and reporting requirements upon only those religious organizations that solicit more than fifty percent of their funds from nonmembers . . . " invalid as a "law[ ] which aid[s] one religion or that prefer[s] one religion over another" by "grant[ing] denominational preferences").

changing religious alignments no longer tethered to a few historic mainline denominations, but grounded in shared belief systems even across international lines. This Court should grant certiorari to clear up the confusion and to determine definitely what the First Amendment means and where the proper balance lies between the Free Exercise and Establishment Clauses.

II. The Court Should Grant the Petition to Resolve the Important Federal Question of Whether *Jones v. Wolf* Created a Federal Constitutional Right Vested in Religious Denominations to Unilaterally Create Property Rights in Their Favor.

At the heart of many property disputes between denominations and local church corporations are trust beneficiary rights purportedly and unilaterally created by the denomination itself. For example, in the present case, the purportedly trust-creating document is Respondent Episcopal Church's so-called Dennis Canon. (This same Dennis Canon has been at issue, with differing outcomes, in California, New York, and South Carolina, among other states.)[10]

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[10] *Episcopal Church Cases*, 45 Cal. 4th 467 (2009); *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, No. 26724, 2009 S.C. LEXIS 462 (S.C. Sept. 18, 2009); *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340, 899 N.E.2d 920 (N.Y. 2008).

The Dennis Canon, like similar efforts to self-create trusts by the denominational putative beneficiary, purports to task independent local church corporations with holding all real property in trust for the denomination's benefit and to require forfeiture if the corporation were ever to change affiliation. The idea of a beneficiary (the denomination) being able to self-settle a trust for its own benefit conflicts with generally applicable principles of property and trust law, the source of additional conflict between the states about what *Jones* meant. *See All Saints*, 2009 S.C. LEXIS 462 at *29; *Episcopal Church Cases*, 45 Cal. 4th at 495 (Kennard, J., concurring and dissenting).

A. State courts are in conflict about whether *Jones* allowed enforcement of top-down denominational trust rules, or simply acknowledged that such rules could be enforced once determined to be valid under neutral state laws.

The idea that a religious denomination may self-create a beneficial trust interest in someone else's property flows directly from this Court's dicta in *Jones v. Wolf*, 443 U.S. 595 (1979). In responding to Free Exercise concerns raised by the dissent, the majority opinion in the case provided an example of the sort of neutral legal principles that might be employed by the parties to determine the result:

> Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Jones, 443 U.S. at 606 (emphasis added).

Some state courts of last resort, including those in California and New York, have read this language as creating a *federal* constitutional right in a denomination to self-create trust rights in local church corporation property by adopting an internal constitutional canon or provision, thereby bypassing the traditional state-law requirement that the property owner must expressly create the trust in writing. *Episcopal Church Cases*, 45 Cal. 4th at 487; *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340, 899 N.E.2d 920 (N.Y. 2008).

California purported to buttress the *Jones* dicta with an interpretation of a state statute as also creating a unique denominational right. Even more

forcefully, though, New York's highest court recently followed a linear trajectory from *Jones* as allowing rote enforcement of unilateral denominational trust canons, even where state law would not permit a non-religious actor to settle a trust in such a self-serving fashion. *Harnish*, 11 N.Y.3d at 351-52. Quoting verbatim the *Jones* dicta, the New York Court of Appeals held that "[t]he enactment of the Dennis Canons [sic] was apparently an attempt by the Episcopal Church to do exactly what this language suggested – to 'ensure . . . that the faction loyal to the hierarchical church [would] retain the church property.'" *Id.* at 350. Disregarding the fact that other neutral principles of law, like the deeds and corporate documents, did not reflect any trust interest in favor of the denomination, the New York court summarily held that the Dennis Canon was "dispositive." *Id.* at 351. In effect, it read *Jones* as creating a *federal* First Amendment constitutional right for denominations to self-create a beneficial interest in the property of local church corporations in a manner at odds with normal state property laws.

Other states, however, have found no mandate in the *Jones* dicta for denominational trust canons to be enforced. In *All Saints Parish Waccamaw*, *supra*, for example, the South Carolina Supreme Court held the Dennis Canon unenforceable as representing nothing more than a declaration of a non-owner of property:

> [N]either the 2000 Notice nor the Dennis Canon has any legal effect on title to the All Saints congregation's property. . . . It is

> an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice [claiming an interest in the property pursuant to the Dennis Canon], have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

All Saints, 2009 S.C. LEXIS 462 at *28-*29.

Similarly, in *Arkansas Presbytery of Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301 (Ark. 2001), the Arkansas Supreme Court considered *Jones*, adopted the "neutral principles of law" method of resolving church property disputes, and then specifically declined to enforce the denomination's trust rule enacted after acquisition of property but before the split with the local church. "Appellants do not cite any cases that allow a grantor to impose a trust upon property previously conveyed without the retention of a trust." *Id.* at 344. The Arkansas Supreme Court perceived nothing in *Jones* that required it to enforce the mother church's unilaterally adopted trust rule.

B. Even if *Jones* does not require enforcement of denominational trust rules as a matter of federal constitutional law, courts that interpret *Jones* as allowing special state law preferences for certain religious groups create constitutional problems.

Other states interpret *Jones* as allowing special state law preferences for certain religious groups, leading to two Establishment Clause problems. First, some state laws necessitate an entangling inquiry by a civil court into the structure and governance of a religion. California Corporations Code section 9142(c), for example, as interpreted by the California Supreme Court in *Episcopal Church Cases*, purportedly confers the power to self-settle trusts in property owned by a local church corporation solely on "superior religious bodies" and "general churches," not other religious groups or non-religious entities. The statute does not define – much less define in religion-neutral terms – what is a "superior religious body" or "general church." This lacuna leaves lower courts in the position of inquiring into whether one or both of the parties before it is, in fact, "superior" or "general," or "hierarchical" or "congregational" in a religious sense.

This is no easy task. Religious entities – especially today with thousands of different faith groups practicing their religions in the United States – do not come before secular courts branded with such easily compartmentalized terms. Most religious

entities have a more complicated history and structure, and may describe themselves in various ways at various times, for example as hierarchical, spiritually hierarchical but temporally congregational, connectional, presbyterial, collegial, congregational, nondenominational, etc. It is hard to imagine a starker instance of an impermissible ecclesiastical determination than a civil court taking up the question of whether a party before it qualifies as a "superior religious body" or "general church." *See Jones*, 443 U.S. at 450 ("Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice."). And the risk of getting it wrong or of conflicting determinations between different courts is high, as the discussion above makes clear.

Even if such comparisons were possible free of entanglement, rules that differ depending upon the type of religious entity smack of denominational preference. For example, by disregarding or subordinating neutral principles factors such as deeds, articles of incorporation, and longstanding state trust and property laws in favor of denominational trust rules, California and New York now allow some religious groups (denominations) civil law preference over other religious groups (local churches) and nonreligious entities, while South Carolina and Arkansas do not.

C. This Court needs to resolve the conflict created by ambiguities in *Jones*.

With at least four state supreme courts recently going in different directions with regard to denominational trust rules, there is simply no clarity about what this Court's statements in *Jones* mean. Did this Court's passive-voice reference to the "constitution of the general church" being "made to recite an express trust" in favor of the denomination, in the context of a paragraph about what the *parties*, plural, may to do in advance of a legal dispute, mean that denominations like the Episcopal Church and others now have a federal constitutional right to self-settle trusts in property owned by others regardless of neutral state laws governing how trusts in real property must be created? Or was this Court simply envisioning a more traditional situation in which the record owner of a property expressly settles a trust in favor of a religious denomination by executing a written instrument?

Only this Court can declare definitively what it meant in *Jones*. This important question of federal constitutional law currently reverberates among the state courts of last resort. This question should not be left to state courts, but rather should be settled definitively by this Court.

III. This Case Well Frames the First Amendment Issues Regarding Limits on State Law Rules for Determining Property and Corporate Control Disputes Between Denominations and Local Churches.

This case is uniquely suited to be a vehicle to resolve the confusion that has been festering in the three decades since *Jones* as to the First Amendment's role in determining the ever-growing number of disputes between religious denominations and disaffected local churches over property rights and corporate control.

Here, St. Luke's is a nonprofit corporation in good standing. St. Luke's not only holds record title to its property in its own name, but received the largest parcel from the Diocese "absolutely and free of any trust" (to quote the words of the deed). App. 102. "[N]either the Episcopal Church nor the Los Angeles Diocese held record title to the property at issue." App. 18. None of the deeds to the property of St. Luke's recite any trust interest in favor of any person, nor has St. Luke's ever expressly conveyed such an interest to the Episcopal Church or the Diocese of Los Angeles. The property at issue was acquired by St. Luke's well before the Dennis Canon was enacted. *Compare* App. 5 *with Arkansas Presbytery of Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301, 309-10 (Ark. 2001) ("neutral principles of law" requires that courts consider the rules of the general church in place at the time of the property conveyance, not a subsequently-enacted rule); *African*

Methodist Episcopal Zion Church in Am., Inc. v. Zion Hill Methodist Church, Inc., 534 So. 2d 224, 225 (Ala. 1988) (property owned by general church because "[f]or the entire time" the local church was affiliated with it, the general church discipline provided that local church property was held in trust for the general church); *New York Annual Conf. of United Methodist Church v. Fisher*, 438 A.2d 62, 74 (Conn. 1980) (remanding for trial court to consider "what the provisions of the Book of Discipline were at the various times at which the various pieces of property were acquired").

The sole and exclusive basis for Respondents' trust claim is the Episcopal Church's 1979 purported enactment of the Dennis Canon, supposedly creating an after-the-fact trust benefiting the non-owner denomination. App. 6.

The articles of incorporation of St. Luke's subordinate Episcopal rules to state laws. App. 4. St. Luke's vestry (board) changed its bylaws (as corporations commonly do) to eliminate references to the Episcopal Church. App. 7. "[A] wide majority of the congregants of St. Luke's Parish voted to disaffiliate from the Episcopal Church" and to join another branch of the Anglican Communion. *Id.*

The California courts have determined *their* view as to what the First Amendment allows and what state rules govern in these situations. *Episcopal Church Cases* decided that applicable church rules allowing denominational seizure of local church

corporation property by virtue of self-created trust provisions such as the Dennis Canon are generally enforceable. And, the present case, along with *Classis of Central California v. Miraloma Community Church*, 177 Cal. App. 4th 750 (2009); and *New v. Kroeger*, 167 Cal. App. 4th 800 (2008), grant special and unique rights to certain religious denominations on the corporate governance front as well. *But see Iglesia Evangelica Latina, Inc. v. Southern Pac. Latin Am. Dist.*, 173 Cal. App. 4th 420 (2009) (applying neutral principles of corporate law).

In so holding, *New* and its progeny, including this case, have transformed beyond recognition this Court's established rule that "in the case of hierarchical religious entities, as here, the civil courts must accept as binding and defer to decisions by religious tribunals with respect to religious doctrine, practice, faith, ecclesiastical rule, discipline, custom, law, and religious entity governance and administration." *New*, 167 Cal. App. 4th at 816-17 (*citing Jones*, 443 U.S. at 602; *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09, 713 (1976); and *Watson v. Jones*, 80 U.S. 679, 728-29 (13 Wall.) (1871)). Instead, in California, corporate statutes of general applicability now yield to hierarchical denominational decrees even if the dispute can be resolved by neutral principles of law without ever involving church doctrine or polity. In essence, in California, once affiliated with a religious denomination (at least one that is determined by a court to be

"hierarchical," whatever that means), even for a day, a separately incorporated affiliated local church may not ever be able to leave. *Cf.* The Eagles, "Hotel California" ("You can check out any time you like, but you can never leave").

California, thus, prefers certain religious denominations under law, a stance that it views as not only allowed, but compelled by the First Amendment. Its stance is diametrically opposed to that of South Carolina *on essentially the same facts and claims equally interpreting what the First Amendment permits and mandates.*

CONCLUSION

After thirty years without guidance in this area, and conflicting interpretations of what this Court meant in its last church property decision, the meaning of the First Amendment as it applies to property and corporate control disputes between religious denominations and legally separate local church corporations has become fractured and uncertain. The constitutional freedom of religious Americans to affiliate with faith groups of their choosing and conscience, while being able to retain their property and corporate rights under state law, now hinges on their state of residence. There is, in effect, a different First Amendment for this purpose in every state. In this era of religious diversity and fluidity, where historic church structures have given

way to more flexible arrangements, it is time for this Court to step in and delineate the principles that civil courts must employ in determining the effect of self-serving pronouncements by certain religious denominations in church property or local church corporation governance disputes.

This Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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COURT OF APPEAL,
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

PATRICIA HUBER et al., Plaintiffs and Respondents, v. RONALD W. JACKSON et al., Defendants and Appellants; THE EPISCOPAL CHURCH, Plaintiff-in-Intervention and Respondent.	D051669 (Super. Ct. No. BC351287) (Filed Jun. 9, 2009)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Shepard Wiley, Jr., Judge. Affirmed.

The principal issue in this appeal is whether a local parish or the general church and its diocese own

property held in the parish's name, after the parish vestry and a majority of the congregants voted to disaffiliate the parish from the general church and affiliate with another church. After the parties completed their briefing, the California Supreme Court resolved the church property issue against a local parish in a case with facts substantively the same as those here. We are, of course, bound by that precedent. (*Episcopal Church Cases* (2009) 45 Cal.4th 467.) Further, under our opinion in *New v. Kroeger* (2008) 167 Cal.App.4th 800 (*Kroeger*), we reject the assertion the trial court erred by finding that by voting for disaffiliation, the defendants lost the authority to direct the parish corporation, and thus their purported amendments to the parish's governing documents were ultra vires. As there are no material facts requiring trial, we affirm summary judgments for the general church and its diocese.

FACTUAL AND PROCEDURAL BACKGROUND

The Episcopal Church, also known as the Protestant Episcopal Church (hereafter Episcopal Church), a nonprofit unincorporated association, was organized in the United States in 1789. It is a hierarchical church comprised of 111 dioceses. Collectively, the dioceses have thousands of individual churches, called parishes and missions (which do not meet all qualifications to be parishes), where congregants worship. Dioceses are governed by bishops and an annual convention, and parishes are governed by a vestry, consisting of a rector, who is an ordained

priest, and a group of elected laypersons. At the national level, the Episcopal Church is governed by a general convention composed of bishops and deputies, the latter of which include members of parish vestries. The Episcopal Church's constitution and other rules called "canons" are binding on all Episcopal dioceses and parishes, and the dioceses' constitutions and canons are binding on all parishes.

The Episcopal Church entrusts the establishment of parishes to the dioceses. In 1931, St. Luke's of the Mountains Parish of La Crescenta (St. Luke's Parish), then an unincorporated Episcopal mission, sought permission from the Diocese of Los Angeles to become a parish. In its application, as required by a canon of the Los Angeles Diocese, the representatives of the proposed parish submitted this oath: "[W]e hereby solemnly promise and declare that the said Parish shall be forever held under the ecclesiastical authority of the Bishop of Los Angeles, and of his successors in office; and in conformity with the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the U.S. of A., and the Constitutions and Canons of the Diocese of Los Angeles, the authority of which we do hereby recognise [*sic*], and bind ourselves to make part of the Constitution of said Parish, to whose liturgy, doctrine, discipline rights and usages, we do promise at all times, for ourselves and our successors, corporate obedience and conformity."

On or about January 28, 1931, St. Luke's Parish was admitted as a parish of the Los Angeles Diocese.

In July 1940 St. Luke's Parish filed its original articles of incorporation with the Secretary of State, entitled "Articles of Incorporation of the Rector, Wardens, and Vestrymen of St. Luke's of the Mountains Episcopal Church in La Crescenta, Incorporated." The articles stated "the purposes for which the said corporation is formed are: (a) To establish and maintain a parish which shall form a constituent part of the Diocese of Los Angeles . . . , (b) To hold all property of the Association owned prior to incorporation, and such as may be acquired hereafter in any manner; to transact all business relating thereto, to encumber or alienate property under such conditions and restrictions as may be prescribed by law and by the Constitutions and Canons of the said Church." The articles also stated: "The Constitution and Canons, rules, regulations and discipline of the said branch of The . . . Episcopal Church . . . , and the Constitutions and Canons of the said Church in the Diocese of Los Angeles, for the time being, shall, unless they be contrary to the laws of this State, always form a part of the By-Laws, Ordinances, Constitution and Articles of Incorporation of this corporation."

In 1924, Louisa S. Janvier had deeded real property to the bishop of the Los Angeles Diocese. The deed stated: "Provided always and this grant is made upon the express condition that said Lot shall be used for church purposes only according to the canons, usages, and doctrines of the Protestant Episcopal Church, and that a church or chapel shall be erected

on said property within ten years." A church was constructed on the property, and in August 1940 the bishop of the Los Angeles Diocese deeded the property to St. Luke's Parish for a consideration of $10. The parish purchased two other parcels in the 1950's with parish funds.

A number of canons of the Episcopal Church pertain to parish property and have historically prohibited a parish from alienating property without obtaining permission from the higher authorities. For instance, Canon II.6 provides: "'Sec. 1. No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently satisfied that the building and the ground on which it is erected are secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons. [¶] Sec. 2. It shall not be lawful for any Vestry, Trustees, or other body authorized by the law of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.'" (*Episcopal Church Cases, supra,* 45 Cal.4th at pp. 474-475.) The Episcopal Church adopted the original version of section 2 of

Canon II.6 in 1868, and it added section 1 in 1871. (*Id.* at p. 475.)[1]

Further, at its 1979 annual meeting the Episcopal Church adopted Canon I.7.4, which expressly confirms that on a parish's disaffiliation from the church, parish property belongs to the Episcopal Church or the diocese. Canon I.7.4 provides: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons." St. Luke's Parish was officially represented at the 1979 annual meeting by its rector and lay delegates.

Before the instant dispute arose, St. Luke's Parish had last amended its bylaws in 1993. The

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[1] Additionally, the parish's corporate bylaws stated: "The Rector, *subject to the Bishop of the Diocese,* shall have exclusive charge of all things pertaining to or affecting the spiritual interests of the Parish. . . . He shall at all times have access to the church building or church buildings, and shall have the custody of the keys of the same." (Italics added.) The bylaws also prohibited the vestry from selling, conveying or encumbering the property without complying with diocesan Canon 3.06, which prohibited a parish from selling, conveying or encumbering parish property without its written permission.

bylaws acknowledged that the "corporation [or parish] is an *integral subordinate unit and constituent part of the [P]rotestant Episcopal Church in the Diocese of Los Angeles and of the Protestant Episcopal Church in the United States of America. The Constitution and Canons of [those entities], now or hereafter in effect, are incorporated, by reference, in these Bylaws, as a basic and essential part hereof.*" (Italics added.)

In 2003 the Episcopal Church ordained an openly gay man as a bishop in New Hampshire. (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 475.) In November 2003 the vestry of St. Luke's Parish purported to revise the corporation's bylaws to eliminate references to the Episcopal Church. The vestry, however, did not then notify the congregation. In February 2006 the vestry and a wide majority of the congregants of St. Luke's Parish voted to disaffiliate from the Episcopal Church and join the Anglican Church of Uganda (Anglican Church). Shortly thereafter, the vestry caused to be recorded amended articles of incorporation that purported to rename the corporation "St. Luke's of the Mountains Anglican Church in La Crescenta."

The bishop of the Los Angeles Diocese quickly advised St. Luke's Parish's vestry members they were no longer entitled to control parish property or act on behalf of St. Luke's Episcopal Parish. Further, under an Episcopal Church canon, the bishop appointed a priest-in-charge of the parish "to manage the affairs of the parish and to minister to the parish's

remaining faithful Episcopalian members until a new vestry and rector can be properly elected." The dissident faction, however, refused to surrender the property and continued to use it in their association with the Anglican Church. The congregants who remained loyal to the Episcopal Church "were no longer allowed to use their own parish as Episcopalians."

In April 2006 the Los Angeles Diocese, its bishop, the priest-in-charge of the parish, and a parish member who remained faithful to the Episcopal Church, sued the former rector and other former vestry members of St. Luke's Parish (defendants), for declaratory and injunctive relief and breach of contract. The complaint also named the parish corporation as a "nominal [d]efendant because it is currently under the *de facto* control of individuals who claim authority to divert the Property of the Parish for their own use." A first amended complaint alleged the parish property was held in trust for the Episcopal Church and the Los Angeles Diocese, after defendants' disaffiliation they and their new parish have no right in the property, and their purported changes to the corporate structure were ultra vires. The Episcopal Church filed a complaint in intervention.

All parties moved for summary judgment, agreeing the material facts are undisputed. The court granted the Episcopal Church's and the Los Angeles Diocese's motions and denied the defendants' motion. The judgment provides that "[a]ll real and personal

property held by or for the benefit of St. Luke's [Parish] on or before February 13, 2006, . . . is held in trust for the Episcopal Church and the [Los Angeles] Diocese"; "Defendants may not retain possession, ownership, or control of the Property"; "Defendants' actions in attempting to disaffiliate St. Luke's Episcopal Parish from the Episcopal Church and the Diocese were *ultra vires*"; the "Episcopal Church hierarchy has resolved the intra-congregational dispute between Plaintiffs and Defendants by determining a) which congregants are the actual members of St. Luke's, b) the authorized parish leadership to be the duly appointed Priest-in-Charge and the Episcopal vestry at such time as it may be reconstituted, and c) that the authorized parish leadership has the right to use, manage and control the Property in accordance with the Episcopal Church and Diocesan Constitutions and Canons"; "Defendants may not divert, alienate or use the Property for any purposes whatsoever"; and "St. Luke's Episcopal Parish shall be exclusively comprised of those individuals recognized by the Diocese and the Episcopal Church."

DISCUSSION

I

Standard of Review

A "party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he [or she] is entitled to

judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant satisfies this burden by showing "'one or more elements of' the 'cause of action' . . . 'cannot be established,' or that 'there is a complete defense'" to that cause of action. (*Ibid.*) We review the trial court's ruling on summary judgment de novo. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

II

Supreme Court Precedent: Episcopal Church Cases Opinion

A

Defendants contend the trial court erred by not deciding the church property dispute under the four-factor "neutral principles of law" approach, and instead deferring to the position of the Episcopal Church and the Los Angeles Diocese under an appellate opinion that applied a "principle of government" approach to such a dispute, but is no longer good law because the California Supreme Court accepted the review of the case. Defendants assert the rule of deference applies only when a dispute cannot be resolved without deciding a religious issue, and this is not such a case. Defendants submit that under a neutral principles of law approach, they should prevail, particularly since the parish holds record title to the property rather than the higher church authorities.

The Supreme Court has now decided the case to which defendants refer, *Episcopal Church Cases,* but not in a manner helpful to them. To the contrary, the opinion resolves the property dispute here in favor of the Episcopal Church and the Diocese. The court held that a neutral principles of law approach applies to a church property dispute when it can be decided without reference to religious principles, but under such an approach a local parish held property in trust for the national church under facts substantively the same as those here. (*Episcopal Church Cases, supra,* 45 Cal.4th at pp. 478-482.)

The First Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment (*Cantwell v. Connecticut* (1940) 310 U.S. 296, 303), provides: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." "Because of the risks of inhibiting the free development of religion and entangling secular interests in ecclesiastical concerns, the 'First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.'" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 494 (conc. & dis. opn. of Kennard, J.).)

As the United States Supreme Court explained in *Jones v. Wolf* (1979) 443 U.S. 595, 602, a state "has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." However, the "First

Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. [Citations.] As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." (*Ibid.*) "Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, 'a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" (*Ibid.*)

In *Jones v. Wolf, supra,* 443 U.S. at pages 602 and 603, the court held a state could constitutionally adopt a "'neutral principles of law'" approach to resolving church property disputes. This approach considers the language of the deeds, the terms of the local church's charter, the provisions of the general church's governing documents pertaining to property ownership, and any relevant state statutes governing the holding of church property. (*Id.* at p. 603.) "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts

completely from entanglement in questions of religious doctrine, polity, and practice." (*Ibid.*)

The majority in *Jones v. Wolf* rejected the dissent's argument that the First Amendment compels use of the "principle-of-government approach" for hierarchical churches approved in *Watson v. Jones* (1872) 80 U.S. (13 Wall.) 679, under which the "higher church authorities would necessarily win." (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 486.) The majority in *Jones v. Wolf* wrote the dissent's argument "assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. *At any time before the dispute erupts,* the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. *And the civil courts will be bound to give effect to the result indicated by the parties,* provided it is embodied in

some legally cognizable form." (*Jones v. Wolf, supra,* 443 U.S. at p. 606, italics added.)

Episcopal Church Cases, supra, 45 Cal.4th 467, involved the St. James Parish in Newport Beach (St. James Parish), a former parish of the Los Angeles Diocese, which also disaffiliated itself from the Episcopal Church after it ordained a gay bishop. A disagreement arose as to parish property. The Los Angeles Diocese and various individuals sued persons affiliated with St. James Parish, and the Episcopal Church intervened. (*Id.* at p. 476.)

After discussing *Jones v. Wolf* at length, the court in *Episcopal Church Cases* held: "[S]ecular courts called on to resolve church property disputes should proceed as follows: State courts must not decide questions of religious doctrine; those are for the church to resolve. Accordingly, if resolution of a property dispute involves a point of doctrine, the court must defer to the position of the highest ecclesiastical authority that has decided the point. But to the extent the court can resolve a property dispute without reference to church doctrine, it should apply neutral principles of law. The court should consider sources such as the deeds to the property in dispute, the local church's articles of incorporation, the general church's constitution, cannons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as Corporations

Code section 9142[2]." (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 485.)

On the merits, the court found in favor of the Episcopal Church. The court noted that shortly after the *Jones v. Wolf* decision, "and in apparent reaction to it, the Episcopal Church added Canon I.7.4, which recites an express trust in favor of the denominational church. This occurred some 25 years before the instant dispute erupted." (*Episcopal Church Cases, supra* 45 Cal.4th at p. 487.) Canon I.7.4 "states that the trust does not limit the authority of the parish over the property 'so long as the particular Parish . . . remains a part of, and subject to, this Church and its Constitution and Canons.' Other canons adopted long before St. James Parish existed also contained substantial restrictions on the local use of church property." (*Episcopal Church Cases, supra,* at p. 486.) The court concluded that *Jones v. Wolf* "together with the Episcopal Church's adoption of Canon I.7.4 in response, strongly supports the conclusion that, once defendants left the general church, the property reverted to the general church." (*Episcopal Church Cases, supra,* at p. 487.)

Additionally, the court explained that section 9142, subdivisions (c) and (d), enacted in 1982 shortly after *Jones v. Wolf* was published, compels the conclusion that once defendants voted to disaffiliate, the parish property reverted to the Episcopal Church.

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[2] Further statutory references are to the Corporations Code.

(*Episcopal Church Cases, supra,* 45 Cal.4th at p. 488.) As relevant, the statute provides: "(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies: [¶] . . . [¶] (2) Unless, and only to the extent that, the articles or bylaws of the corporation, *or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.* [¶] . . . [¶] (d) Trusts created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments *creating the trusts. . . .*" (§ 9142, italics added.)

The court elaborated that the statute appears to be the type of statute the United States Supreme Court envisioned in *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.* (1970) 396 U.S. 367 (*Church of God*), in approving a court's reliance on "'provisions of state statutory law governing the holding of property by religious corporations. . . .'" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 481.) In *Church of God,* Justice Brennan added in his concurring opinion that a possible approach to resolving church property disputes "'is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical policy, as well as doctrine, to church governing bodies.'" (*Episcopal Church Cases, supra,*

at p. 488, quoting *Church of God, supra,* at p. 499 (conc. opn. of Brennan, J.).) In *Episcopal Church Cases, supra,* at pages 488-489, the court explained "[s]ection 9142, subdivisions (c) and (d), does not permit state interference in religious doctrine and leaves control of ecclesiastical policy and doctrine to the church. Subdivision (c) of that section permits the governing instruments of the general church to create an express trust in church property, which Canon I.7.4 does. Subdivision (d) permits changing a trust, but only if done in the instrument that *created* it. Canon I.7.4 has not been amended."[3]

In *Episcopal Church Cases,* the court noted that although St. James Parish held record title to the property, the parish "agreed from the beginning of its existence to be part of a greater denominational

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[3] Notably, in *Rector, Wardens and Vestrymen of Trinity-Saint Michael's Parish, Inc. v. Episcopal Church* (Conn. 2003) 620 A.2d 1280, 1292-1293, the court held that Canon I.7.4 "merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of [the Episcopal Church] in 1789. [Citations.] As was made clear at trial, the panoply of constitutional and canonical provisions of [the Episcopal Church] and the Diocese 'strongly indicate that the local church property was to be held for the benefit of the general church, and . . . show the extensive nature of the policy direction and property control to be exercised by the general church.'" (fn. omitted; accord, *In re Church of St. James The Less* (Penn. 2005) 888 A.2d 795, 810; *Bishop and Diocese of Colorado v. Mote* (Colo. 1986) 716 P.2d 85, 108; *Trustees of Diocese of Albany v. Trinity Episcopal Church of Gloversville* (N.Y.App.Div. 1999) 250 A.D.2d 282, 288.)

church and to be bound by that greater church's governing instruments," and held "[t]hose instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church. Respect for the First Amendment free exercise rights of persons to enter into a religious association of their choice, as delineated in *Jones v. Wolf, supra,* 443 U.S. 595 (as well as the provisions of section 9142), requires civil courts to give effect to the provisions and agreements of that religious association." (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 489.)

Here, neither the Episcopal Church nor the Los Angeles Diocese held record title to the property at issue. As the parish in *Episcopal Church Cases,* however, St. Luke's Parish agreed from the time it became a parish to be an integral part of the Episcopal Church and the Los Angeles Diocese and to be bound by their governing documents. St. Luke's Parish was admitted as a parish after submitting an oath of obedience, and its articles of incorporation and bylaws promised allegiance to the national church and the diocese. Further, the bylaws do not allow amendment of the allegiance provision without permission from the higher authorities.

Contrary to defendants' position now, their agreement to be bound by the governing documents of the Episcopal Church extends to Canon I.7.4. As the court concluded in *Episcopal Church Cases,* "[i]t is a bit late to argue that Canon I.7.4 was not effectively

adopted, a quarter of a century later, and, in light of the consistent conclusions of . . . out-of-state cases that that canon is, indeed, part of the Episcopal Church's governing documents, the argument seems dubious at best. But, in any event, this is one of those questions regarding 'religious doctrine or polity' [citation] on which we must defer to the greater church's resolution. [Citation.] Over the years, the Episcopal Church has consistently taken the position that Canon I.7.4 was effectively adopted." (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 492.) St. Luke's Parish representatives were present when the national church adopted Canon I.7.4. Moreover, in 1993, St. Luke's amended its bylaws to confirm that it was an integral part of the Episcopal Church and the Los Angeles Diocese and their governing documents "*now or hereafter in effect,* are incorporated, by reference, in these Bylaws, as a basic and essential part hereof." (Italics added.) The 1993 amendment expressly embraces Canon I.7.4.

To any extent the court here applied a standard deferential to the Episcopal Church rather than a neutral principles of law approach, there was no prejudicial error because application of the latter approach would not give defendants a more favorable result. (*In re Ponce De Leon* (2004) 117 Cal.App.4th 1116, 1121.) Under the holding of *Episcopal Church Cases,* St. Luke's Parish holds the property in question in trust for the Episcopal Church and the Los Angeles Diocese, and by disaffiliating from the church defendants and their new parish under

another church have no right in the property. The individual defendants were free to disaffiliate from the national church and the diocese, but the "'problem lies in defendants' efforts to take the church property with them. This they may not do.'" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 493, quoting *Protestant Episc. Church Diocese of N.J. v. Graves* (N.J. 1980) 417 A.2d 19, 25; *see also Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 929; *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 499 (*Korean United*), overruled on an unrelated issue in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11.)[4]

B

Collateral Estoppel

Defendants also contend the trial court erred by rejecting their argument the Episcopal Church and the Los Angeles Diocese are collaterally estopped

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[4] Defendants claim the grant deed to the property shows title was given to St. Luke's Parish free from any trust in favor of the Episcopal Church. The deed states: "Grantor [the bishop of the Los Angeles Diocese] declares that this deed is made for the purpose of vesting legal title, now *held by him in trust for the Grantee,* in the Grantee absolute and free of any trust." (Italics added.) The term "any trust," however, is reasonably interpreted to mean the trust under which the bishop originally held the property when he received it from a private party.

from claiming entitlement to the parish property since it litigated a similar issue in an earlier case and lost. Collateral estoppel, one of two aspects of the res judicata doctrine, precludes the relitigation of an identical issue necessarily decided in previous litigation. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.) The "collateral estoppel doctrine may allow one who was not a party to prior litigation to take advantage, in a later unrelated matter, of findings made against his current adversary in the earlier proceeding." (*Id.* at pp. 828-829.)

Defendants rely on *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599 (*Barker*). In *Barker,* the court applied a neutral principles of law approach, and held that three local churches did not hold property in trust for the Episcopal Church. The court noted the local churches held record title to the properties and paid for them out of their own funds, their articles of incorporation did not expressly alienate the properties, and they "did not subject themselves to express restraints on their property by reason of the constitution, canons, and rules of [the Episcopal Church] and the [Los Angeles] Diocese." (*Id.* at p. 625.)

As the court explained in *Episcopal Church Cases, supra,* 45 Cal.4th 467, however, *Barker* is distinguishable "largely due to the passage of time. In that case, the dispute arose and indeed, the trial court judgment was entered before (1) the decision in *Jones v. Wolf, supra,* 443 U.S. 595, (2) the Episcopal Church adopted Canon I.7.4, and (3) the Legislature

enacted section 9142, subdivisions (c) and (d). The appellate court in *Barker* did not mention any of the general church's canons. Accordingly, that decision does not control a dispute that, here, arose 25 years after the high court decision and the adoption of Canon I.7.4." (*Episcopal Church Cases, supra,* at p. 491.) Further, we now have Supreme Court precedent on the matter. "Collateral estoppel does not apply where there are changed conditions or new facts which did not exist at the time of the prior judgment, or where the previous decision was based on different substantive law." (*United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 616.)

III

Control of St. Luke's Parish Corporation

Defendants concede the Episcopal Church and the Los Angeles Diocese "certainly may make a pronouncement that some group of individuals is the 'true' St. Luke's *Episcopal* Parish,", and they "are free to decree that whomever they wish is the authorized 'Episcopal Parish' in La Crescenta." Indeed, "[i]t has long been the law in California that the identification of a religious body as the true church is an ecclesiastical issue." (*Korean United, supra,* 230 Cal.App.3d at p. 500.) California decisions on the point "are consistent with the constitutional mandate of the United States Supreme Court that civil courts may not overrule actions of authorities of hierarchical

denominations with respect to matters of church polity." (*Id.* at p. 501.)

Defendants, however, contend the court erred by determining their actions in purporting to amend the corporation's articles of incorporation and bylaws to disaffiliate St. Luke's Parish from the Episcopal Church and the Los Angeles Diocese were ultra vires. Defendants complain that the ruling "vaporiz[ed] [the corporation's] board of directors and the rights of its more than 100 voting members." Defendants claim the corporation has an independent existence from the national church and the diocese, and after the disaffiliation they lack standing to raise any issues pertaining to the corporation.[5]

We have, however, already decided the corporate control issue in favor of the national church in similar circumstances. (*Kroeger, supra,* 167 Cal.App.4th 800.) *Kroeger* arose from a dispute over the governance of

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[5] As a practical matter, it appears that defendants' argument pertaining to corporate control is inextricably linked to its argument pertaining to property ownership, which we have already resolved against them. Defendants state in their reply brief that the "Diocese cannot swoop in at this point and, in hindsight, determine that some 'true church' group is entitled to 'control' the [corporation]. Otherwise, in every local church disaffiliation, the denomination could thwart the process *and take the property* through top-down decrees." (Italics added.) Aside from the property issue, defendants do not advise us as to how the court's ruling on corporate control harms them, or of any impediment to their forming a new corporation for a parish affiliated with the Anglican Church.

St. John's Parish, which was a member of the Episcopal Church. As here, the members of St. John's Parish's clergy, members of the governing board and a majority of parish members (collectively the defendants) resigned their membership in the Episcopal Church and voted to become affiliated with a Anglican Church in Africa. The Bishop of the Diocese of San Diego determined the remaining loyalist members of St. John's Parish (collectively the individual plaintiffs) constituted the true membership of the parish, the resigned dissident members were no longer qualified to serve as members of the governing board, and a new governing board should be elected. The individual plaintiffs elected a new board, but the resigned members of the board refused to relinquish their seats or control over the assets of St. John's Parish, which were held by a corporation known as St. John's Parish corporation (Parish corporation). (*Id.* at p. 806.)

The individual plaintiffs and the San Diego Diocese filed a lawsuit under California corporations law, seeking a declaration they were the true and lawful directors of St. John's Parish. The trial court found for the defendants, but we reversed the judgment. We held that "(1) applying neutral principles of law, defendants lacked the power and authority to amend the bylaws and articles of incorporation of the Parish corporation to make it part of the Anglican Church [in Africa], and their actions in this regard are a legal nullity; (2) by taking the actions they did, defendants were no longer a part of the Episcopal

Church and could not be the lawful directors; (3) we must give deference to the Episcopal Church and San Diego Diocese's determination as to who constituted the true members of St. John's Parish, and consequently the election of the individual defendants as board members of the Parish corporation was a legal nullity; and (4) applying neutral principles of law to the actions of the Episcopal Church and San Diego Diocese in determining who were the true members of the church, the result is the same." (*Kroeger, supra,* 167 Cal.App.4th at p. 807.)

In *Kroeger,* we explained the trial court's "fundamental mistake in deciding this matter under the neutral principles of law approach is that it believed that under this approach it was restrained to rely solely on California corporations law in a vacuum, without reference to the articles of incorporation and bylaws of the Parish corporation, as well as the constitution and canons of the Episcopal Church and the San Diego Diocese, and it [ ] fail[ed] to recognize that religious corporations are, in their basic sense, different from ordinary corporations." (*Kroeger, supra,* 167 Cal.App.4th at p. 820.) We pointed out that "the canons of the Episcopal Church mandate that the vestry members 'well and faithfully perform the duties of that office in accordance with the Constitution and the Canons of [the Episcopal] Church and of the Diocese in which the office is being exercised.' Further, the diocesan canons require vestry members to be 'qualified electors' of the Episcopal Church. In order to serve as a 'warden' of a vestry

(one of a vestry's lay officers), one must be a 'communicant in good standing.' Finally, the diocesan canons provide that parishes must follow specific procedures for dissolution, which include consent of the bishop. In the event of such change, title to parish assets reverts to the diocese. . . . [¶] Thus, when defendants resigned from the Episcopal Church, they were no longer empowered to act, and their actions in attempting to amend the bylaws and articles of incorporation were a nullity. They also ceased being directors of the Parish corporation as they were not members in good standing of the Episcopal Church." (*Id.* at pp. 821-822.)

Further, the bylaws of the Parish corporation "state that the constitution and canons of the 'Episcopal Church' shall 'always form part of the by-laws, ordinances, constitutions, and discipline of the parish; and prevail against any resolutions, by-laws, or other enactment by this parish that may appear to be repugnant to such Constitutions, Canons, Rules, Regulations, or Discipline.' The articles of incorporation similarly state that the parish church 'shall continue perpetually to be, a constituent unit or part of [the Episcopal Church,] pursuant to and in accordance with the Constitutions and Canons, rules, regulations, and discipline of said Church. . . .'" (*Kroeger, supra,* 167 Cal.App.4th at p. 822.) We concluded "the articles of incorporation and bylaws of the Parish corporation . . . dictate that defendants, once they resigned their membership in the Episcopal Church, were no longer members in good standing,

had no power to amend the bylaws or articles of incorporation of the corporation, and, most important for this case, were no longer directors of the corporation." (*Id.* at p. 823.)

In *Korean United, supra,* 230 Cal.App.3d 480, the court also decided the corporate control issue in favor of a national church under similar circumstances. In *Korean United,* the court held, under a neutral principles of law approach, that the attempt by a dissenting faction of a parish to amend the corporation's bylaws to sever the parish's ties with the national church was ineffective. The court explained that "[a]t that moment [of voting for disaffiliation], if not before, these members had renounced any further obligation to be subject to the doctrines or discipline of PCUSA [Presbyterian Church (U.S.A.)], and, in effect, renounced their membership in the . . . nonprofit corporation, *since its articles of incorporation required adherence to the doctrines and discipline of PCUSA as a condition of membership.* Having abandoned their membership in the . . . corporation, they lost all power and ability to determine its future status." (*Korean United, supra,* 230 Cal.App.3d at p. 506, italics added; *see also Protestant Episc. Church Diocese of N.J. v. Graves, supra,* 417 A.2d at pp. 24-25 [when persons disaffiliated themselves from the national church they automatically terminated their eligibility to hold office as wardens and vestrymen of parish].)

Here, likewise, the local church's articles of incorporation required adherence to the governing

documents of the Episcopal Church and the Los Angeles Diocese as a condition of membership in the corporation. The original 1940 articles of incorporation stated the corporation's purposes were to maintain a congregation of the Episcopal Church, establish and maintain a parish of the Los Angeles Diocese, and hold property and transact all business related thereto "as may be prescribed by law and by the Constitutions and Canons of [the Episcopal Church]." Additionally, the articles provided that the "Constitution and Canons, rules, and regulations and discipline of the [Episcopal Church], and the Constitutions and Canons of [the Los Angeles Diocese], for the time being, shall, unless they be contrary to the laws of this State, *always* form a part of the By-Laws, Ordinances, Constitution and Articles of Incorporation of this corporation." (Italics added.)

The articles of incorporation further stated that "all corporate powers shall be exercised by or under the authority of, and the temporal business and affairs of the corporation shall be controlled by, the Board of Vestrymen," and "[t]o be eligible for the position of Vestryman, a person should be a communicant of the Parish, and a recorded contributor to the financial support of the Parish." Further, the articles stated the "qualifications of members and the terms of admission to membership in this corporation are those prescribed by the Canons of the Diocese of Los Angeles for persons eligible to vote at an election of Vestrymen and Directors."

Additionally, the corporate bylaws provided that the "Constitution, Canons, Rules, Regulations and Discipline of [the Episcopal Church], and the Constitutions and Canons of the [Los Angeles Diocese] *shall,* unless they be contrary to the laws of this State, *always* form part of the By-Laws, Ordinances, Constitution and Articles of Incorporation, and prevail against anything therein contained that may appear to be repugnant to such Constitutions, Canons, Rules, Regulations or Discipline." (Italics added.) The bylaws also provided that they could be amended only by an affirmative vote of not fewer than seven vestrymen, and the article incorporating the governing documents of the Episcopal Church and the Los Angeles Diocese into the bylaws "*shall not be amended unless the Canons of the Diocese of Los Angeles shall have first been amended as to said matters, and such amendment hereof shall then be in harmony with said Canons as amended.*" (Italics added.) The parish bylaws were amended in 1979, 1980 and 1993, but they continued to expressly state the parish is a constituent part of and bound by the governing documents of the Episcopal Church and the Los Angeles Diocese.

Under the corporation's own governing documents, which defendants essentially ignore, their purported amendments of the articles of incorporation and bylaws to delete references to the Episcopal Church and to affiliate with the Anglican Church were ineffective. Further, under diocesan law a parish may not change its status unilaterally. Rather, the

Los Angeles Diocese prescribes how that may be achieved. Article XIX of its constitution governs the dissolution of a parish, for instance when a parish has "persistently disregarded or refused to conform" to any of the national or diocesan canons, and diocesan Canon 3.07 provides for the reversion of a parish to "mission" status. Either event requires diocesan action.

Defendants cite section 9132 for the proposition the corporation is not subordinate to the national church or diocese, and thus the dissident faction retains control over it. The statute provides that the articles of incorporation of a religious nonprofit corporation may set forth various provisions, "which shall not be effective unless expressly provided in the articles." (§ 9132, subd. (a).) Among other things, the articles may provide that "[i]n the case of a subordinate corporation instituted or created under the authority of a head organization," "the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it." (§ 9132, subd. (a)(2)(i).)

St. Luke's Parish, however, was incorporated in 1940, before section 9132's precursor was enacted. (*Korean United, supra,* 230 Cal.App.3d 480, 511.) In *Korean United,* the court explained: "The statutory law in 1945 did not require that such provisions [pertaining to subordination] be expressly provided in the articles; rather, such provisions were self-executing, and KUPC's [Korean United Presbyterian

Church] reference to them in its articles of incorporation was all that was required to invoke their application to KUPC." (*Ibid.*) Again, the articles of incorporation here recited that the corporation would be subject to the governing documents of the national church and the diocese.

As we held in *Kroeger,* courts do not review matters pertaining to religious corporations in a vacuum, without reference to the governing documents of the local church, the national church and the diocese. The state permits the incorporation of religious bodies "only . . . as a convenience to assist in the conduct of the temporalities of the church. Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper. A religious corporation . . . , under the laws of this state, is something peculiar to itself. Its function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church." (*Wheelock v. First Presbyterian Church* (1897) 119 Cal. 477, 483.)

Indeed, the Corporations Code defines "bylaws" of a religious corporation as including "the code or codes of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated." (§ 9150, subd. (a).) "'This approach . . . is designed specially to permit bylaws of a religious corporation to include other

types of rules and regulations to be found in various religious documents such as canons, constitutions, or rules of other religious bodies; church traditions if sufficiently ascertainable; rules of a religious superior; and similar sources.'" (*Korean United, supra,* 230 Cal.App.3d at p. 504, quoting 1B Ballentine & Sterling, Cal. Corp. Law (4th ed. 1990) § 418.04, at p. 19-493.)

Applying neutral principles of law, we conclude as a matter of law that when defendants voted for disaffiliation, they denounced their prior promises to be subject to the governing documents of the national church and the diocese, abandoned their membership in the corporation, and lost the power and authority to be directors of the corporation, as they were no longer members in good standing of the Episcopal Church. Thus, their purported amendment of the articles of incorporation and bylaws to make the corporation part of the Anglican Church were a legal nullity, or ultra vires. "'"[U]ltra vires" refers to an act which is beyond the powers conferred upon a corporation by its charter or by the laws of the state of incorporation. . . .'" (*Sammis v. Stafford* (1996) 48 Cal.App.4th 1935, 1942; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Corporations, § 120, p. 896 ["*Ultra vires* acts include those beyond the powers or authorized business of the corporation under limitations in its articles."].) As there are no triable issues of material fact, summary judgment for the Episcopal Church and the Los Angeles Diocese was proper.

DISPOSITION

The judgment is affirmed. The Episcopal Church and the Los Angeles Diocese are entitled to costs on appeal.

McConnell, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.

CERTIFIED FOR PUBLICATION

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PATRICIA HUBER, et al., Plaintiffs and Respondents, v. RONALD W. JACKSON et al., Defendants and Appellants; THE EPISCOPAL CHURCH, Intervener and Respondent.	D051669 (Super. Ct. No. BC351287) ORDER CERTIFYING OPINION FOR PUBLICATION (Filed Jul. 1, 2009)

THE COURT:

The opinion filed June 9, 2009, is ordered certified for publication.

The attorneys of record are:

Payne & Fears, Eric C. Sohlgren and Daniel F. Lula for Defendants and Appellants.

Holme Roberts & Owen, John R. Shiner, Brent E. Rychener; Horvitz & Levy and Jeremy B. Rosen for Plaintiffs and Respondents.

Goodwin Procter, David Booth Beers, Heather H. Anderson, Jeffrey D. Skinner and Elizabeth F. Stone for Intervener and Respondent.

/s/ McConnell
McCONNELL, P. J.

Copies to: All parties

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

PATRICIA HUBER, et al., Plaintiffs and Respondents, v. RONALD W. JACKSON et al., Defendants and Appellants; THE EPISCOPAL CHURCH, Intervener and Respondent.	D051669 (Super. Ct. No. BC351287) ORDER DENYING PETITION FOR REHEARING (Filed Jul. 1, 2009)

THE COURT:

The petition for rehearing is denied.

/s/ McConnell
McCONNELL, P. J.

Copies to: All parties

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES – CENTRAL DISTRICT

PATRICIA HUBER; THE RIGHT REV. SERGIO CARRANZA; THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a California nonprofit corporation; and THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES,

Plaintiffs,

v.

THE REV. DR. RONALD W. JACKSON; THE RECTOR, WARDENS AND VESTRYMEN OF ST. LUKE'S OF THE MOUNTAINS, a California nonprofit corporation; TIM KELLY; BURT LEHMAN; CHRIS BLAKEY; TED BRENNER; MARY CROSBY; DAVE DE VOS; ALICIA GREELEY; DON GUNN; DEBBIE KOLLGAARD; BOB LINDSTROM; SUE RAY; LORI RICHARDSON; and DOES 1-50,

Defendants,

THE EPISCOPAL CHURCH,

Plaintiff-in-Intervention.

CASE NO. BC351287

JUDGMENT FOR PLAINTIFFS AND PLAINTIFF IN INTERVENTION

(Filed Jul. 26, 2007)

The parties' three summary judgment motions came on for hearing on July 3, 2007, in Department 50 of the Superior Court, before the Hon. John Shepard Wiley, Jr., presiding.

John R. Shiner and Brent Rychener of Holme Roberts & Owen LLP appeared as counsel for Plaintiffs Patricia Huber, The Right Rev. Sergio Carranza, The Protestant Episcopal Church in the Diocese of Los Angeles ("Diocese") and the Right Rev. J. Jon Bruno, Bishop Diocesan of The Episcopal Diocese of Los Angeles ("Bishop") (collectively "Plaintiffs"). Heather H. Anderson of Goodwin Proctor LLP appeared as counsel for Plaintiff in Intervention The Episcopal Church ("Plaintiff in Intervention" or "Episcopal Church"). Eric C. Sohlgren and Daniel F. Lula appeared as counsel for Defendants The Rev. Dr. Ronald W. Jackson, The Rector, Wardens and Vestrymen of St. Luke's of the Mountains a/k/a St. Luke's of The Mountains Anglican Church in La Crescenta ("St. Luke's), Tim Kelly, Burt Lehman, Chris Blakey, Ted Brenner, Mary Crosby, Dave De Vos, Alicia Greeley, Don Gunn, Debbie Kollgaard, Bob Lindstrom, Sue Ray, and Lori Richardson (collectively, both jointly and severally, "Defendants").

The Court, having duly reviewed and considered the motions filed by the parties, the evidence, the arguments of counsel, and the governing law, orally issued an Order granting the motions for summary judgment by Plaintiffs and Plaintiff in Intervention in their entirety, and denied Defendants' motion for summary judgment. Pursuant to Section 437c(g) of

the Code of Civil Procedure, the Court stated the reasons for its determination, referred to the evidence which indicates there existed no triable issue of fact, and recorded its determination on the record.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs are entitled to Judgment against Defendants, and each of them, on their First Cause of Action for Declaratory Relief and Second Cause of Action for Breach of Contract.

2. Plaintiff in Intervention is entitled to Judgment against Defendants, and each of them, on its First Cause of Action for Declaratory Relief.

3. All real and personal property held by or for the benefit of St. Luke's on or before February 13, 2006 ("Property") is held in trust for the Episcopal Church and the Diocese.

4. Defendants may not retain possession, ownership, or control of the Property.

5. Defendants' actions in attempting to disaffiliate St. Luke's Episcopal Parish from the Episcopal Church and the Diocese were *ultra vires*.

6. The Episcopal Church hierarchy has resolved the intra-congregational dispute between Plaintiffs and Defendants by determining a) which congregants are the actual members of St. Luke's, b) the authorized parish leadership to be the duly appointed Priest-in-Charge and the Episcopal vestry at such

time as it may be reconstituted, and c) that the authorized parish leadership has the right to use, manage and control the Property in accordance with the Episcopal Church and Diocesan Constitutions and Canons.

7. Defendants may not divert, alienate or use the Property for any purposes whatsoever.

8. St. Luke's Episcopal Parish shall be exclusively comprised of those individuals recognized by the Diocese and the Episcopal Church.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT Defendants, and each of them, their officers, agents, servants, employees, attorneys and any persons in active concert or participation with them, are RESTRAINED and ENJOINED from diverting, alienating or using the Property for any purposes whatsoever. Defendants shall a) relinquish ownership, possession, and control of the Property to the Priest-In-Charge appointed by the Bishop and b) render to the Diocese a full accounting of all Property held by or for the benefit of St. Luke's from the date of St. Luke's last parochial report filed with the Diocese through and including such date as all Property has been relinquished to the Diocese and fully accounted for.

Plaintiffs and Plaintiff in Intervention shall recover prejudgment and post judgment interest as allowed by law. Plaintiffs and Plaintiff in

Intervention shall recover their costs in the amount of $ 10,171.50 sp .

/s/ J Wiley
HONORABLE JOHN
SHEPARD WILEY, JR.
JUDGE OF THE
SUPERIOR COURT

ENTERED this 26 day of July, 2007

PROOF OF SERVICE
CCP§ 1010.6, CCP§ 1013, CCP§ 1013A
Patricia Huber, et al. v.
The Rev. Dr. Ronald Jackson, et al.
Los Angeles County Case No. BC351287

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 777 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5826.

On July 25, 2007, I served the foregoing document(s) described as **JUDGMENT FOR PLAINTIFFS AND PLAINTIFF IN INTERVENTION**

on the interested party/parties in this action as follows:

Eric Sohlgren, Esq. Daniel Lula, Esq. Payne & Fears LLP Jamboree Center 4 Park Plaza, Suite 1100 Irvine, CA 92614 Tel: (949) 851-1100 Fax: (949) 851-1212	*Attorneys for Defendants The Rev. Dr. Ronald W. Jackson, et al.*
Heather H. Anderson, Esq. Goodwin Procter LLP 901 New York Avenue, NW Washington, DC 20001 Tel: (202) 346-4000 Fax: (202) 346-4444	*Attorneys for The Episcopal Church*
Elizabeth Stone Goodwin Procter LLP 101 California Street, Suite 1850 San Francisco, CA 94111 Tel: (415) 733-6000 Fax: (415) 677-9041	*Attorneys for The Episcopal Church*

☐ BY PERSONAL SERVICE: I caused the above-mentioned document(s) to be personally served to the offices of the addressee as indicated above.

☒ BY FACSIMILE: I communicated the above-mentioned document(s) via facsimile transmittal to the addressee as indicated above. The transmission was reported complete and without error by a transmission report issued by the facsimile transmission machine as defined in California Rule of Court 2003 upon which the said transmission was made

immediately following the transmission. A true and correct copy of the transmittal report bearing the date, time and sending facsimile machine telephone number shall be attached to the original proof of service.

☐ BY ELECTRONIC MAIL (E-MAIL): I caused the above-mentioned document(s) to be served via electronic mail from my electronic notification address to the electronic notification address of the addressee as indicated above. The document was served electronically and the transmission was reported complete without error.

☐ BY FEDERAL EXPRESS: I caused the above-mentioned document(s) to be sent via Federal Express overnight delivery. By placing a true and correct copy of such document(s) enclosed in a sealed envelope or package designated by the express service carrier and deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf, with delivery fees paid or provided for, addressed to the address last shown by that person on any document filed in the action as indicated above.

☒ BY MAIL: By placing a true and correct copy of such document(s) enclosed in a sealed envelope addressed to the offices indicated above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S.

postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 25, 2007, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Elaine Bell
ELAINE BELL

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

DATE: 07/03/07	**DEPT.** 50
HONORABLE JOHN SHEPARD WILEY JR JUDGE	M. MATA DEPUTY CLERK
HONORABLE JUDGE PRO TEM #3	ELECTRONIC RECORDING MONITOR
M. TAVAKOLI, C.A. Deputy Sheriff	K. THIBODEAUX (CSR #9858) Reporter

8:30 am BC351287
PATRICIA HUBER ET AL
VS
THE REV DR RONALD W JACKSON ET (X)

Plaintiff Counsel	LAWRENCE P. EBINER (X) BRENT RYCHENER (X) HEATHER H. ANDERSON (X)
Defendant Counsel	DANIEL F. LULA (X) ERIC C. SOHLGREN (X)

NATURE OF PROCEEDINGS:

ADDITIONAL APPEARANCES:
J.A. TUCKER (X)
DAVID TUMILTY (X)
SUSAN RAY (X)
LORI RICHARDSON (X)
MARY JANSS CROSBY (X)
BURT LEHMAN (X)

MOTION OF PLAINTIFFS, PATRICIA HUBER, THE RIGHT REV. SERGIO CARRANZA, THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, THE RIGHT REV. J JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES FOR SUMMARY JUDGMENT;

MOTION OF DEFENDNATS, THE REV. DR. RONALD W. JACKSO [sic] ET AL. FOR SUMMARY JUDGMENT;

MOTION BY DEFENDANT, EPISCOPAL CHURCH FOR SUMMARY JUDGMENT;

POST MEDIATION STATUS CONFERENCE;

Matter is called for hearing.

The Court states its tentative ruling to grant the Motion for Summary Judgment for plaintiff and plaintiff-in-intervention and deny the defendants' Motions for Summary Judgment, as more fully reflected in the notes of the official court reporter incorporated herein by reference.

Matter is argued. The Court's tentative ruling stands.

Judgment is entered against defendants and in favor of the plaintiff and plaintiff-in-intervention.

Plaintiff is to submit a judgment by July 5, 2007 after submitting to opposing counsel as to form and content.

Counsel for plaintiff is to give notice.

Court of Appeal, Fourth Appellate District,
Division One – No. D051669

S175401

IN THE SUPREME COURT OF CALIFORNIA

En Banc

PATRICIA HUBER et al.,
Plaintiffs and Respondents,

v.

RONALD W. JACKSON et al.,
Defendants and Appellants;

THE EPISCOPAL CHURCH,
Intervener and Respondent.

The petition for review is denied.

(Filed Sep. 17, 2009)

/s/ **GEORGE**
Chief Justice

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Attorneys for Defendants
THE REV. DR. RONALD W. JACKSON, *et al.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES – CENTRAL DISTRICT

PATRICIA HUBER; THE RIGHT REV. SERGIO CARRANZA; THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a California nonprofit corporation; and THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES,

Plaintiffs,

v.

THE REV. DR. RONALD W. JACKSON; THE RECTOR,

CASE NO. BC351287

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

(Filed Jun. 8, 2007)

Date: July 3, 2007
Time: 8:30 a.m.
Department: 50
Judge:
John Shepard Wiley, Jr.

WARDENS AND VESTRYMEN OF ST. LUKE'S OF THE MOUNTAINS, a California nonprofit corporation; TIM KELLY; BURT LEHMAN; CHRIS BLAKEY; TED BRENNER; MARY CROSBY; DAVE DE VOS; ALICIA GREELEY; DON GUNN; DEBBIE KOLLGAARD; BOB LINDSTROM; SUE RAY; LORI RICHARDSON; and DOES 1-50, Defendants, and THE EPISCOPAL CHURCH, Plaintiff-in-Intervention.	Date Action Filed: April 24, 2006 Trial Date: None Set

* * *

claim. Third, as this Court has already soundly ruled, the Fifth Appellate District's decision in *California-Nevada Annual Conf. v. St. Luke's United Methodist Church*, 121 Cal. App. 4th 754 (2004), is the definitive case interpreting California Corporations Code section 9142. Under the reasoning of *St. Luke's*, Plaintiffs do not prevail.

1. *Jones v. Wolf* Does Not Mandate That This Court Robotically Enforce TEC's "Dennis Canon."

Plaintiffs sparingly quote from *Jones* and boldly conclude that "so long as a church constitution recites an express trust, as does [that of TEC], *Jones* requires nothing more, Civil courts must therefore defer to Canon I.7(4)." Pl. Memo. at 14. This gross exaggeration is not only legally wrong, but it would evaporate "neutral principles" jurisprudence in California.

(a) The Actual Holding of *Jones v. Wolf* Is Favorable to Local Churches, Not Denominations

The starting point for an analysis of *Jones v. Wolf* is its holding, not its dicta. Nowhere did *Jones* rule on the enforceability of denominational trust canons. Rather, *Jones* confronted whether state courts are required to defer to denominational "hierarchies" in resolving church property disputes when a local congregation withdraws. *Jones* answered in the negative.

In *Jones*, like here, members of a local Presbyterian church voted 164 to 94 to withdraw from the denomination, which then "determined" that the minority of members loyal to the denomination were entitled to control the church property. *Jones*, 443 U.S. at 598. The Georgia courts paid no regard to this "determination" and, using the "neutral

principles of law" method, held in favor of the local church and the majority members. *Id.*

The U.S. Supreme Court held that a state may constitutionally employ the "neutral principles" approach and need not credit the denomination's "determination" of the dispute. *Id.* at 603. While the Constitution prohibits state courts from resolving religious doctrine (i.e., by determining who has been more faithful to the Faith), state courts need not "adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." *Jones*, 443 U.S. at 605.

* * *

Evidence Code section 662 provides that St. Luke's Church is presumed to be holder of full beneficial title and this presumption can only be overcome by clear and convincing evidence. Plaintiffs have not produced any evidence that the articles or bylaws at any time stated an express trust or that the boards amending these bylaws intended to subject their property (expressly held "free of any trust" in the words of the deed) to an express trust in favor of Plaintiffs.[8] In

[8] Plaintiffs' argument that the bishop's 1940 conveyance of property to St. Luke's Church "for the purpose of vesting title in the Grantee absolutely and free of any trust" was not really free of any trust is almost silly. Lula Decl., Ex. "C" (Grant Deed). In an attempt to avoid this powerful piece of evidence, Plaintiffs suggest that there must have been some other unspecified, unnamed trust under which the prior owner held the property

(Continued on following page)

fact, St. Luke's Church could not have done so without amending or modifying the deed. Plaintiffs' roundabout syllogism – the bylaws mention canons, and canons mention trust, so therefore a trust exists – and speculation about why the bylaws were amended hardly constitute clear and convincing evidence of intent on the part of St. Luke's Church to create an express trust.

D. This Court Need Pay No Attention to Diocesan "Determinations"

Plaintiffs' final "hail Mary" pass of their Motion is the argument that this Court must "defer to the Diocesan determination as to the true identity of St. Luke's parish . . . " Pl. Memo. at 24. This argument fails for two reasons.

First, Plaintiffs' witnesses admitted under oath that no such "determination" was ever made, that the Diocese never "reconstituted" a new "Vestry" for St. Luke's Church as the Complaint claims, and that the Diocese cannot identify a specific group of individuals who have continued to act as a St. Luke's congregation in La Crescenta. Defendants' Statement of Undisputed Material Facts (filed 5/18/07), ¶¶24-27.

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and which the deed released. Plaintiffs' speculation on page 16 of their Memorandum is not sufficient to create a triable issue, and a plain reading of the deed to St. Luke's Church's original parcel of property indicates that it was conveyed "free of any trust."

The "determination" to which this Court is being told it must "defer" is a sham.

Second, nothing in the law requires that this Court act as a rubber stamp to Plaintiffs' self-serving "determinations." As shown above, *Jones v. Wolf* held that state courts need not so defer. *Jones*, 443 U.S. at 603, 605. California courts are in accord. In *Presbytery of Riverside v. Community Church*, 89 Cal. App. 3d 910, 924 (1979), the Court of Appeal simply ignored the denomination's determination made after the local church disaffiliated. The deference rule advanced by Plaintiffs might make sense when two bodies within an Episcopal church both claim to be the true Episcopal congregation, not when a local church withdraws entirely. Deferring to the denomination in the latter case would make the entire "neutral principles" method irrelevant. Why examine the four "neutral principles" factors when the denomination has already "resolved" who should control the property? Plaintiffs' argument collapses of its own weight.

Lastly, Plaintiffs' charitable trust argument, made on pages 23 and 24 of their Memorandum, was summarily disposed of in *Barker*:

> Plaintiffs-respondents also draw on the analogy of charitable trusts to imply a trust by reason of the abandonment by the four seceding church organizations of their original stated purpose of operating parish churches as integral parts of the Diocese . . . Respondents' argue that the charitable

> purpose of the four local churches is to further the activities of the Diocese and PECUSA and that this purpose cannot be carried out in the absence of affiliation. We do not construe charitable purpose so narrowly, nor do we believe that affiliation with a particular charitable organization is a necessary concomitant of charitable function.

Barker, 115 Cal. App. 3d at 619-20 (rejecting charitable trust argument). Once again, this ruling is *res judicata* as to the Diocese and those in privity with it.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment Or, In the Alternative, Summary Adjudication should be denied in its entirety.

DATED: June 8, 2007 PAYNE & FEARS LLP

By: /s/ Daniel Lula
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SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES – CENTRAL DISTRICT

PATRICIA HUBER; THE RIGHT REV. SERGIO CARRANZA; THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, a California nonprofit corporation; and THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES,

Plaintiffs,

v.

THE REV. DR. RONALD W. JACKSON; THE RECTOR,

CASE NO. BC351287

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE EPISCOPAL CHURCH'S MOTION FOR SUMMARY JUDGMENT

(Filed Jun. 8, 2007)

Date: July 3, 2007
Time: 8:30 a.m.
Department: 50
Judge:
John Shepard Wiley, Jr.

Date Action Filed:
April 24, 2006
Trial Date: None Set

WARDENS AND VESTRYMEN OF ST. LUKE'S OF THE MOUNTAINS, a California nonprofit corporation; TIM KELLY; BURT LEHMAN; CHRIS BLAKEY; TED BRENNER; MARY CROSBY; DAVE DE VOS; ALICIA GREELEY; DON GUNN; DEBBIE KOLLGAARD; BOB LINDSTROM; SUE RAY; LORI RICHARDSON; and DOES 1-50,

Defendants,

and

THE EPISCOPAL CHURCH,

Plaintiff-in-Intervention.

* * *

4. **The Former Bylaws of St. Luke's Church Did Not Create Any Trust With Respect to the Church's Property**

It is impossible for the bylaws of a corporation to create a trust in its property, for two reasons. First, if *Barker* held that incorporating canons by reference in the articles of a corporation does not create a trust, then *a fortiori* such reference in the bylaws – a far more mercurial document – cannot do so. TEC has not cited a single California authority for the

proposition that the board, acting alone, can settle a trust over all corporate property through a mere bylaw. That proposition, in any case, runs afoul of the corporate rule that a board cannot alienate or sell all or substantially all assets of the corporation without shareholder approval, Cal. Corp. Code § 1001(a) ("A corporation may sell . . . all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, *approved by the outstanding shares* . . . ") (emphasis added).

Finally, mere incorporation of denominational canons in former bylaws falls far short of the kind of statement of express trust that would be cognizable under California law. Evidence Code section 662 provides that St. Luke's Church is presumed to be holder of full beneficial title, which may only be overcome by clear and convincing evidence. TEC's argument is that since the former bylaws mention canons, and canons mention trust, a trust must exist. However, this string of ever more tenuous events hardly constitutes clear and convincing evidence of intentional action on the part of St. Luke's Church to create an express trust.

D. The First Amendment Does Not Require This Court to Bow to TEC's Self-Serving "Determination" of the "Dispute"

1. Applying "Neutral Principles" and *Barker* Will Not Violate the First Amendment

TEC threatens that if its self-serving "determinations" are not deferred to, the First Amendment will somehow be violated because the Court will not have respected TEC's "own structure and rules." TEC Memo, at 26-27.

Should this Court rule as *Barker* did, it would not rule or adjudicate in any way how TEC must be structured, or how it may govern itself. Unlike the New York legislature in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), which attempted by legislative fiat to interfere in the internal governance of the Russian Orthodox Church, nothing in a ruling based on "neutral principles" would require TEC to organize in a certain manner or interfere with how it has organized itself. Indeed, such a ruling would be expressly allowed by *Jones v. Wolf*. Merely holding that TEC (like any other non-owner of property) cannot unilaterally create a trust over property it does not own is not a constitutional violation.

> This practice [of allowing local churches to hold property in their own names] contrasts with the practice followed by some other general churches . . . where title to local church property is held in the name of the

> general church or in the name of a bishop as trustee for the general church . . . In this and other respects [ECUSA] has granted autonomy to its parishes. *For administrative convenience, it is said. But the same freedom useful for administrative convenience carries the risk that congregations which disaffiliate will take their property with them.*

Barker, 115 Cal. App. 3d at 621-22 (emphasis added); *see also Presbytery of Riverside*, 89 Cal. App. 3d at 932-33. TEC has chosen the structure it wants, and that structure included separate incorporation and property ownership by local churches.

2. TEC's Fanciful "Determinations" Need Not Be Deferred To

Incredibly, TEC claims that it has "determined" who may control St. Luke's Church corporation and that this Court must "defer" to that determination. TEC Memo. at 29-30. This argument fails for two reasons. First, Plaintiffs' witnesses admitted under oath that no such "determination" was ever made, that the Diocese never "reconstituted" a new "Vestry" for St. Luke's Church as the Complaint claims, and that the Diocese cannot identify a specific group of individuals who have continued to act as a St. Luke's congregation in La Crescenta. Defendants' Statement of Undisputed Material Facts (filed 5/18/07), ¶¶24-27. The "determination" to which this Court is being told it must "defer" is a sham.

Second, nothing in the law requires that this Court act as a rubber stamp to TEC's self-serving "determinations." As shown above, *Jones v. Wolf* held that state courts need not so defer. *Jones*, 443 U.S. at 603, 605. California courts are in accord. In *Presbytery of Riverside v. Community Church*, 89 Cal. App. 3d 910, 924 (1979), the Court of Appeal simply ignored the denomination's determination made after the local church disaffiliated. The deference rule advanced by TEC might make sense when two bodies within an Episcopal church both claim to be the true Episcopal congregation, not when a local church withdraws entirely. Deferring to the denomination in the latter case would make the entire "neutral principles" method irrelevant. Why examine the four "neutral principles" factors when the denomination has already "resolved" who should control the property? TEC's deference argument has no merit.[12]

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[12] *Singh v. Singh*, 114 Cal. App. 4th 1264 (2004), and *Concord Christian Ctr. v. Open Bible Standard Churches*, 132 Cal. App. 4th 1396 (2005), do not mandate a different result. In *Singh*, the civil court stepped in to address the issue of a church corporation board that intended to keep itself in office for life. No question of disaffiliation or of property ownership was presented, and nothing in the opinion states that church rules must always be enforced by civil courts. Likewise, in *Concord Christian*, the local church's own bylaws required that it give the denomination notice and an opportunity to be heard at any disaffiliation vote. The local church failed to follow this requirement in its own current bylaws. These cases are not applicable here.

Lastly, TEC's charitable trust argument, made on pages 25 and 26 of its Memorandum, was summarily disposed of in *Barker*:

> Plaintiffs-respondents also draw on the analogy of charitable trusts to imply a trust by reason of the abandonment by the four seceding church organizations of their original stated purpose of operating parish churches as integral parts of the Diocese . . . Respondents' argue that the charitable purpose of the four local churches is to further the activities of the Diocese and PECUSA and that this purpose cannot be carried out in the absence of affiliation. We do not construe charitable purpose so narrowly, nor do we believe that affiliation with a particular charitable organization is a necessary concomitant of charitable function.

Barker, 115 Cal. App. 3d at 619-20 (rejecting charitable trust argument). Once again, this ruling is *res judicata* as to TEC, which was a plaintiff in *Barker*.

IV. CONCLUSION

For the foregoing reasons, TEC's Motion for Summary Judgment should be denied.

DATED: June 8, 2007 PAYNE & FEARS LLP

By: /s/ Daniel Lula
DANIEL F. LULA

Attorneys for Defendants
THE REV. DR. RONALD
W. JACKSON, *et al.*

APPEAL NO. D051669

IN THE COURT OF APPEAL OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION ONE

PATRICIA HUBER, ET AL.,
PLAINTIFFS AND RESPONDENTS,

v.

THE REV. DR. RONALD W. JACKSON, ET AL.,
DEFENDANTS AND APPELLANTS.

Appeal from the Superior Court for the
County of Los Angeles
(Case No. BC51287)
The Honorable John Shepard Wiley, Jr. Trial Judge

APPELLANTS' OPENING BRIEF

(Filed May 29, 2008)

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approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes."].) Even the "provisions in the constitution of the general church" can only be considered "in purely secular terms, and [the court is] not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." (*Id.*)

2. The "Deference Rule" Used By the Trial Court Is Limited Only to Cases That Cannot Be Resolved Without Deciding a Religious Question, Which Is Not the Case Here.

In following the now-depublished *Episcopal Church Cases,* the trial court rejected the "neutral principles" approach and instead reached back to post-Civil War cases where courts determined how a church was governed and then "deferred" to the pronouncements of the hierarchical denomination's "government" (RT, pp. E7-E8; *Episcopal Church*

Cases, 152 Cal.App.4th at 814; *Watson v. Jones* (1872) 80 U.S. 679.) This was error.

The Supreme Court in *Jones v. Wolf* firmly rejected the idea that such deference is constitutionally required: "We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." (*Jones*, 443 U.S. at 605.) A civil court is required to defer to the determinations of a church hierarchy *only* where the dispute in question necessarily turns on, and cannot be resolved without deciding, religious questions. No such religious questions are present in this case.

Two examples make this clear. In *Gonzalez v. Archbishop of Manila* (1929) 280 U.S. 1, the plaintiff was the beneficiary under a civil law will which bequeathed him a "chaplaincy," or an endowed position for clergymen. (*Id.* at 11.) The plaintiff demanded that the Archbishop of Manila appoint him as a Catholic "chaplain" so he could enjoy the endowment's income. The Archbishop refused, and the plaintiff sued in civil court for an order directing that the Archbishop do so. (*Id.*) The U.S. Supreme Court held that such a dispute could not be resolved without necessarily deciding the religious question of whether the plaintiff was qualified to be a Catholic chaplain. As to this purely religious question, the civil judiciary could not substitute its own judgment for that of the church in question. (*Id.* at 16.)

Similarly, in *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, the plaintiff, a bishop, sought to block his denomination from dividing its American diocese into three dioceses and from defrocking him as bishop. (*Id.* at 697, 706-07.) The Supreme Court held that while such decisions might incidentally affect control of property, they were centrally *religious* questions beyond the competence of civil courts to decide. (*Id.* at 718-19, 723-24.)

On the other hand, as *Jones* recognized, church property cases ensuing upon a local church's withdrawal from a denomination do not implicate such concerns. So long as a civil court resolves a property dispute without deciding issues of religious doctrine (but rather confining itself to secular indicia of ownership), the First Amendment is respected. Further, merely because the plaintiff-denomination in a church property dispute might *claim* that religious questions are implicated (as they often do in an attempt to self-determine the outcome) does not mean that "deference" is required. "The relevant inquiry [is] *whether* the court *can resolve* the property dispute on the basis of the neutral principles of law which do not involve the resolution *by the court* of ecclesiastical issues. . . ." (*In re Metropolitan Baptist Church of Richmond* (1975) 48 Cal.App.3d 850, emphasis added.) Here, as demonstrated below, the dispute between Plaintiffs and St, Luke's Church can and should be resolved by means of the preferred modern

approach of "neutral principles of law." No "deference" is required.

3. For Thirty Years, California Courts Have Applied Neutral Principles of Law Without Rebuke From the Supreme Court.

Even prior to the U.S. Supreme Court's commendation of "neutral principles" in *Jones,* California courts had begun using that method in deciding church property disputes. (*See, e.g., In re Metropolitan Baptist*, 48 Cal.App.3d at 859; *Presbytery of Riverside v. Community Church* (1979) 89 Cal.App.3d 910, 923 [resolving Presbyterian Church's claim to property of withdrawing local church on the basis of the four "neutral principles"], *cert. denied*, 444 U.S. 974 (1979).)

* * *

denominations. Indeed, most peer-reviewed articles opine that a "deference" rule – such as used by the trial court here – is now *unconstitutional* when used in church property disputes for numerous reasons.[5]

First, the "deference" rule promotes unconstitutional entanglement by requiring civil courts to make "an initial decision about the nature of a church's government." (Kent Greenawalt, *Hands Off!*

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[5] These constitutional issues are now before the California Supreme Court in *Episcopal Church Cases,* S155094.

Civil Court Involvement in Conflicts Over Religious Property, 98 Colum. L. Rev. 1843, 1877 (1998).) This determination is practically difficult, if not impossible, for a court in today's diverse religious landscape, and constitutionally problematic because rarely, if ever, will that "government" be uncontested between the parties. If the "deference" rule commands that civil courts defer to the "highest judicatory" within a denomination, finding that "judicatory" requires court intrusion into the structure and governing bodies of the church. For example, some commentators have noted that courts tend to fix the "highest judicatory" at too low a point, ignoring international governing bodies in the Anglican Communion. (R. Gregory Hyden, *Welcome to the Episcopal Church, Now Please Leave: An Analysis of the Supreme Court's Approved Methods of Settling Church Property Disputes in the Context of the Episcopal Church and How Courts Erroneously Ignore the Role of the Anglican Communion*, 44 Willamette L. Rev. 541, 560 (2008.).)

Second, the "deference" rule "contains an anomaly that is so evidently impossible to justify, it will almost certainly not survive. The anomaly is the different treatment accorded congregational and hierarchical churches once their polity is determined." (Greenawalt, *supra,* 98 Colum. L. Rev. at 1866.) This favoring of one form of religious organization over another is constitutionally impermissible. (Michael William Galligan, *Note: Judicial Resolution of Intrachurch Disputes,* 83 Colum. L. Rev. 2007, 2021

(1983) ["That courts treat congregational and hierarchical churches differently is further evidence that the deference rule violates the constitutional prohibition of establishment."].) By favoring mainline hierarchical denominations over congregational and newer forms of religious practice, the "deference" rule establishes a special benefit for the former denominations that is not available to the latter (or to secular actors), thus also violating equal protection guarantees.

Third, under the "deference" rule, a party seeking to protect its property may be silenced from arguing that the denomination violated its own rules in reaching its decision, *or even that the church rule in question was never validly adopted.* (*See* Louis A. Sirico, *Church Property Disputes: Churches As Secular and Alien Institutions,* 55 Fordham L. Rev. 335, 349 (1986) ["Even if the local church believed that the denomination had exceeded its jurisdiction or acted arbitrarily, it could not make this argument successfully before a court. The denomination would respond that, according to the Supreme Court, these claims require an unconstitutional examination of church polity."].)

Fourth, the "deference" rule improperly assumes that the local church gave advance assent to any and all rules that the denomination might *later* put into effect, even rules purporting to strip the local church of its property. (Hyden, *supra,* 44 Willamette L. Rev. at 559 [courts seem to assume "a near-slavish

devotion of local churches to their dioceses and denominations" that is not warranted].)

Fifth, the "deference" rule is unconstitutional when used in church property cases for the simple reason that it is not really a legal method of decision at all. Instead, the "deference" rule makes civil courts "handmaidens of arbitrary lawlessness," by requiring them to abdicate their judicatory role in favor of the self-serving "resolution" of the dispute *by one of the parties.* (*Serbian Eastern Orthodox Diocese*, 426 U.S. at 727, Rehnquist, J., dissenting; Kathleen E. Reeder, *Whose Church Is It Anyway? Property Disputes and Episcopal Church Splits*, 40 Colum. J. L. & Soc. Probs. 125, 135 (2006) ["When applying the deference approach, the deck is essentially stacked in favor of the national church, which acts as both a party to the dispute and an adjudicator whose decision will be entitled to great deference by the courts."].)

* * *

to remove all references to the Diocese and Episcopal Church, including their "constitution and canons." (2 AA 490-492.) Therefore, Plaintiffs' canons do not create any trust over St. Luke's Church's property.

3. Section 9142(c) Should Not Be Interpreted to Allow Unilateral Creation of Trusts in Order to Avoid Serious Constitutional Issues.

Even if the language and legislative history of section 9142(c) were susceptible to different

interpretations, "statutory provisions should be interpreted in a manner that avoids serious constitutional questions." (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.* (1999) 20 Cal.4th 1178, 1197 [citations omitted].) Accordingly, section 9142 cannot be interpreted in a manner which confers special and sweeping powers and exemptions on "general churches," which is what it would do if Plaintiffs' anticipated argument is adopted. "General churches" (whatever those are), alone out of all civil law actors, would be given the power to do something hitherto unknown in the law: create a trust in their own favor over property they do not own, simply by passing their own internal "rule" to that effect.

This different and preferential treatment for religious organizations – and only certain "general" organizations at that – is the essence of unconstitutional establishment. (*Rosenberger v. Rector & Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 854-55 [Thomas, J. concurring] [discussing unconstitutionality of singling out religious entities for special benefits].) Section 9142(c) should be interpreted as *California-Nevada* has done, in order to avoid this fatal constitutional flaw.

III. THE TRIAL COURT ERRED IN FAILING TO HOLD PLAINTIFFS COLLATERALLY ESTOPPED FROM RELITIGATING THEIR TRUST CLAIMS.

A. The Same Party Plaintiffs Here Previously Brought and Lost the Same Trust Claims Against Three Churches With Governing Documents Identical to Those of St Luke's Church.

It is undisputed that the same Diocese and same Episcopal Church who are Plaintiffs here were plaintiffs in *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599, 604 ["Plaintiffs, the Protestant Episcopal Church in the Diocese of Los Angeles, a California corporation (Diocese), and the Protestant Episcopal Church in the United States of America, an unincorporated association (PECUSA), brought these four separate actions.

As the table below illustrates, the *Barker* decision dealt with exactly the same trust claims now raised by Plaintiffs, on precisely the same facts. There, as here, the Diocese and Episcopal Church contended that the local churches' articles of incorporation created a trust because they recited that the churches were "constituent parts" of the Diocese, and incorporated by reference the "constitution and canons" of the Episcopal Church. There, as here, the Diocese and

* * *

bylaws of St. Luke's Church at all relevant times from 1940 to the present both (1) provided for the issuance of voting memberships; and (2) provided that the voting members of the Church corporation were to elect the board of directors. (3 AA 656, 684-685, 717.) Under the Corporations Code, the foregoing statutes and bylaws gave St. Luke's Church a separate, independent, and self-governing existence. (2 AA 484-489.)

B. The Lower Court Committed Reversible Error By Holding That Plaintiffs' Spiritual Determinations About Who Is Episcopalian Operate to Vaporize a Secular Board of Directors.

Nevertheless, the trial court summarily awarded control of St. Luke's Church corporation to the Plaintiffs and Plaintiff-in-Intervention. (RT, p. E20.) This was error for at least four separate reasons.

First, the basis for Plaintiffs' claim to control of St. Luke's Church is their assertion that, *as a religious matter,* the Diocese has "identified" the "true members" of St. Luke's Church as the "exiled" members of the congregation. (1 AA 29.) Leaving aside for the moment the legal efficacy of such an action, the record is clear that neither the Diocese, nor Bishop Bruno, has ever made the "determination" claimed. David Tumilty, the "person most knowledgeable" deposed in place of the Diocese, admitted in deposition that the Diocese *has not* "identified" any particular group as the "true church" entitled to the property of St. Luke's Church. (2 AA 469.) The Diocese also

admitted that it *has not* "reconstituted" a "Vestry" for "St. Luke's Episcopal Church." (3 AA 561-562 ["The Bishop has not appointed a new vestry."], 567.) The supposed "priest-in-charge" of this mythical "true church" admitted that he has never held a single church service for any such "exiled" group, has never celebrated a single sacrament for any member of such a group, and cannot identify the "Vestry" (lay governing board) of the supposed "true church." (3 AA 646-650.)

These undisputed facts force the following conclusions: (1) no "true church" has been identified by Plaintiffs; (2) there is no "group" in "exile" from St. Luke's Church; and therefore (3) there is no "intra-church dispute" at St. Luke's Church.

Second, even if the Diocese had purported to "declare" that Plaintiff Huber (who lacks standing) and some other unidentified people who have never come forward, are the "true St. Luke's Church," such a declaration *does not operate* to vaporize the board of directors of the corporation or disenfranchise its voting membership. The Diocese may choose not to recognize St. Luke's Church as an Episcopal "Parish," or declare that the directors are no longer an Episcopal "Vestry"; the Diocese is also free to anoint Plaintiff Huber and her nonexistent group as the "real" or "true" Episcopal presence in La Crescenta. But these actions do not breach the wall of corporate self-governance conferred by the Corporations Code. As the Fifth Appellate District rightly held, "[a] general church may certainly view a local church's board of directors as being 'unauthorized' and not in

compliance with the general church's rules. This is an ecclesiastical matter, and not a matter with which a civil court would interfere. *But we respectfully disagree with the view that acts of a board of directors of a lawfully formed corporation may be viewed by a civil court to be a nullity simply because those acts are deemed unauthorized not by any recognized rule of state law, but rather only by the general church's own rules.*" (*California-Nevada*, 121 Cal.App.4th at 771 [emphasis added], *citing Jones*, 443 U.S. 595.)

No matter the former spiritual affiliation between the two, from the standpoint of corporate law, the Diocese and Plaintiffs are corporate outsiders vis-à-vis St. Luke's Church. Corporate outsiders have *no* standing to challenge or control management of the corporation. "A corporate outsider cannot bring suit to challenge a corporation's management or control. Only a shareholder, officer, or director has standing to do so." (*Korean Phila. Presbyterian Church v. Cal. Presbytery* (2000) 77 Cal.App.4th 1069, 1083 (denomination does not have "standing to challenge control of the Church corporate organization currently in the hands of [one] group"), *citing* 9 Witkin, Summary of Cal. Law, Corporations (9th ed. 1989), § 127, p. 626.) Adopting the approach of the trial court would allow any religious corporation's independent personhood to be evaporated at will by a larger religious association or conference with which it is affiliated. Allowing a denomination to seize control of a separate religious corporation at will would render the entire "neutral principles" analysis pointless and irrelevant, since in

any dispute the denomination could bypass the issue of who owns the property by simply claiming control of the entity that holds it. This approach would nullify church property jurisprudence and establish the "deference" rule under another form. As the Fifth Appellate District warned, "Although the hierarchical theory has supposedly been rejected in California, it will nevertheless live on under the label of 'neutral principles of law,' if a church's own rules are viewed as trumping state statutes." (*California-Nevada*, 121 Cal.App.4th at 771.)

The court of a sister state has enunciated this distinction between secular governance and spiritual bodies in elegant fashion: "The courts in this state have long recognized the concept that, whenever there is an incorporated church, there exist two entities . . . [T]here is a spiritual church and a secular legal corporation, each separate though closely connected. Each entity has a separate purpose. Questions involving the spiritual church are ecclesiastical in nature, and civil courts cannot decide any questions concerning this entity. *In contrast, the secular corporate entity is formed by the state and performs civil functions, e.g., holding title to church property, and is in no sense ecclesiastical in its function*; therefore, civil courts can decide questions concerning the corporation." (*Trinity*, 374 So.2d at 866 [emphasis added].)

National church leaders may well have the power to recognize or not recognize "parishes" or other *spiritual* entities, but they have no power to unilaterally

dissolve or disregard a properly incorporated legal person. The trial court's ruling awarding control of St. Luke's Church corporation to Plaintiffs was clear error.

APPEAL NO. D051669

IN THE COURT OF APPEAL OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION ONE

PATRICIA HUBER, ET AL.,
PLAINTIFFS AND RESPONDENTS,

v.

THE REV. DR. RONALD W. JACKSON, ET AL.,
DEFENDANTS AND APPELLANTS.

Appeal from the Superior Court
for the County of Los Angeles
(Case No. BC351287)
The Honorable John Shepard Wiley, Jr., Trial Judge

APPELLANTS' CONSOLIDATED REPLY BRIEF

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(ERRONEOUSLY SUED HEREIN AS "THE RECTOR, WARDENS AND VESTRYMEN OF ST. LUKE'S OF THE MOUNTAINS"); TIM KELLY; BURT LEHMAN; CHRIS BLAKEY; TED BRENNER; MARY CROSBY; DAVE DE VOS; ALICIA GREELEY; DON GUNN;, DEBBIE KOLLGAARD; BOB LINDSTROM; SUE RAY; LORI RICHARDSON

* * *

interpreted as describing presumptive rules limiting trusts, the court in *Korean United* jumped to the conclusion that section 9142(c) conferred power on denominations to create trusts in their own favor over property they do not own. (*Id.*) A second court in *Guardian Angel Polish Nat'l Catholic Church v. Grotnik* (2004) 118 Cal.App.4th 919, 931, simply parroted this cursory conclusion without any further analysis.

In contrast, the fifth Appellate District in *California-Nevada* undertook a thorough exercise in statutory construction and concluded that section 9142(c) "does not authorize a general church to create trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists." (*California-Nevada,* 121 Cal.App.4th at 757.) Because *California-Nevada* looked at the statute's entire text (*id.* at 766-67), the legislative history indicating no intent to confer power on putative trust beneficiaries (*id.* at 770), and how the denomination's interpretation of the statute would conflict with well-established trust and property laws (*id.* at 769), its analysis of section 9142(c) is more persuasive and should be adopted by this Court.

C. Respondents' Reading of Section 9142 Unconstitutionally Prefers Hierarchical Religion.

Under the interpretation of section 9142(c) advanced by Respondents and rejected by *California-Nevada*, the property owner's consent to the trust is irrelevant because section 9142(c)(2) uses the term "or" in referring to articles, bylaws or denominational governing instruments. Thus, they say, a trust can be created without the consent of St. Luke's Church, and indeed presumably over its express objection. (DOB, p. 22.) This position would subject *every* religious corporation that is somehow affiliated, however lightly or flexibly, with a "superior religious body" (whatever that is) to surreptitious loss of its property.

By conferring such an awesome power on "superior religious bod[ies]," but only such bodies, while disregarding other neutral laws governing how trusts are created, Respondents' interpretation of section 9142(c) would violate the First Amendment's proscription on establishing churches and the California Constitution's prohibition on preferring religion (*Larkin v. Grendel's Den, Inc.* (1982) 459 U.S. 116 [authority granted to churches to preclude the grant of liquor licenses to establishments near a church or school found to violate the establishment clause]; *Sands v. Morongo Unified Sch. Dist.* (1991) 53 Cal. 3d 863 [school sponsored prayer violates California Constitution's no preference clause]; Cal. Const., Art. 1, § 4 ["Free exercise and enjoyment of religion without discrimination or preference are

guaranteed. . . . The Legislature shall make no law respecting an establishment of religion."])

D. Section 9142(d) Is Not the "Dispositive Statutory Language" That Respondents Claim.

Section 9142(d) states that trusts "created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments creating * * * ended any intrachurch "controversy when it withdrew . . . and terminated its relationship with the Presbyterian denomination"].)

To the extent that courts might be reluctant to inquire into the process by which religious denominations *purport* to affect adherents' vested property rights because of entanglement concerns, the solution is to decline to give denominations such preferential treatment. If a non-religious voluntary association cannot, under the authorities cited above, use internal rules to take member property, then neither should a denomination. But that is exactly what Respondents seek here – to be treated *more* favorably and deferentially than other voluntary associations because they are a hierarchical church. Such a course would unconstitutionally prefer one form of religion over other religions and secular actors.

Respondents have not produced a single case in which a secular voluntary association passed an internal rule purporting to create a trust for itself in

member property, and was able to enforce that rule to confiscate the property of a *departing* member.[8] As a result, Respondents' claim that failing to enforce its "trust canon" would somehow constitute treating it "less favorably than other private voluntary secular associations" is specious. (DOB, p. 33.) Respondents' voluntary association argument should be rejected.

III. THE "PRINCIPLE OF GOVERNMENT" APPROACH SUGGESTED BY RESPONDENTS IS BASED ON A NOW-DEPUBLISHED CASE AND DEEPLY FLAWED.

A. Antiquated California Cases Do Not Support Some Uniform "Principle of Government" Rule.

Respondents argue that California precedent compels this Court to apply a "principle of government" approach to resolve church property disputes. (DOB, p. 35.) This is not so. For over thirty years, California courts have routinely applied the "neutral principles of law" method of adjudicating church

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[8] Respondents cite cases dealing with fraternal lodges and union chapters for the proposition that local entities are not "independent organizations" and that their property "becomes impressed with the group purpose." (DOB, p. 30.) These antiquated cases pre-date the Legislature's enactment of the comprehensive Nonprofit Religious Corporation Law in 1978. That statutory regime makes clear that religious corporations are real and independent organizations that are not "subordinate" to larger organizations unless their articles specifically reference particular statutory language. (*See, e.g.*, Corp. Code § 9132.)

property disputes approved in *Jones v. Wolf* (1979) 443 U.S. 595. The concept of some pre-existing "principle of government" rule comes from the now-depublished decision in *Episcopal Church Cases* (2007) 152 Cal.App.4th 808, *rev. granted by, depublished by* 67 Cal.Rptr.3d 170 (Cal. 2007).

The post-Civil War cases cited by Respondents should not be credited because they do not stand for a uniform rule at all. Instead, they are halting and haphazard in their analyses and engage in some actions that would be unquestionably unconstitutional today. For example, while *Wheelock v. First Presbyterian Church of Los Angeles* (1897) 119 Cal. 477, ultimately aligned with the denomination on the disposition of property, the court did not just "defer" to its "government," but reserved for itself the division of property, noting

* * *

are essentially property disputes only incidentally involving or arising out of ecclesiastical disputes." (*Presbytery of Riverside*, 89 Cal.App.3d at 919-23 [surveying *Watson* and the pre-*Jones* California decisions and finding no need for deference to the decrees of a hierarchical church in a property dispute].)

B. Respondents' "Principle of Government" Approach Is a Backdoor and Unconstitutional Attempt to Allow Religious Beneficiaries to Unilaterally Create Trusts.

Respondents praise the "principle of government" argument as somehow more "practical" and "predictable" – which it is, if by predictable one means that one party to the litigation – the religious denomination – always wins. (DOB, p. 40.)

At base, Respondents are putative beneficiaries of a trust they want to impose over St Luke's Church's property. Respondents could have, but did not, obtain a trust interest in the property as others in our society must do under state law and as other churches have done (e.g., by reserving and recording an interest in the original parcel at the time of conveyance; by insisting that St. Luke's Church could not affiliate without a recorded trust instrument in favor of the Diocese; by Respondents holding record title themselves; etc.) Because Respondents have no express, written instrument signed by St. Luke's Church to support this purported trust in a manner compliant with California law, they seek to avoid the legal gaps by demanding "deference" under the "principle of government" approach because they are a religious denomination. Acceding to Respondents' demands would vest religious denominations – but only religious denominations – with the power to settle trusts in their own favor over property they do not own.

Numerous scholars have expressed concern about the inherent constitutional problems in such an approach. (Kent Greenawalt, *Hands Off! Civil Court-Involvement in Conflicts Over Religious Property,* 98 Colum. L. Rev. 1843, 1868 (1998) ["Observers have recognized that this difference constitutes a kind of favoring of the institutional authorities of hierarchical churches."]; Michael William Galligan, *Note: Judicial Resolution of Intrachurch Disputes,* 83 Colum. L. Rev. 2007, 2021 (1983) ["That courts treat congregational and hierarchical churches differently is further evidence that the deference rule violates the constitutional prohibition of establishment."].) Defendants in such cases may not even be able to argue that the denomination demanding deference has failed to follow its own, internal procedures or that the decree which it seeks to enforce was not validly rendered. (Louis A. Sirico, *Church Property Disputes: Churches As Secular and Alien Institutions,* 55 Fordham L. Rev. 335, 349 (1986) ["Even if the local church believed that the denomination had exceeded its jurisdiction or acted arbitrarily, it could not make this argument successfully before a court. The denomination would respond that, according to the Supreme Court, these claims require an unconstitutional examination of church polity."].)

The "principle of government" approach Respondents crave is nothing more than a "heads I win, tails you lose" method that ignores the real facts and law – e.g., who is the record titleholder, and was an express written trust settled and signed per the Probate Code

– and gives religious denominations a "pass" instead. This approach unconstitutionally establishes churches. (*See Larkin*, 459 U.S. at 127 ["substitut[ing] the unilateral and absolute power of a church for the reasoned decisionmaking of a public legislative body acting on evidence and guided by standards, on issues with economic and political implications" violates the First Amendment].)

IV. UNDER THE "NEUTRAL PRINCIPLES" METHOD WHICH SHOULD BE APPLIED HERE, ST. LUKE'S CHURCH PREVAILS.

A. California Courts Have Applied "Neutral Principles" For Thirty Years and This Court Should Also.

While differing in outcome, it cannot be gainsaid that very Court of Appeal decision for the past thirty years has used the "neutral principles of law" method to resolve church property disputes. From *Presbytery of Riverside,* decided in 1979, to *California-Nevada,* decided in 2004, the use of "neutral principles" to resolve church property disputes has been clear.

Even those decisions that ruled in favor of the denomination (or its handpicked local group) did so on distinguishing facts, but still invoked the "neutral principles" method. (*Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 491-92, 505-06 [deeds were in the name of the Presbytery rather than the local church, and the Presbytery removed

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trust in relation to real property is not valid unless evidenced by . . . a written instrument signed by the trustee . . . , [or] by a written instrument conveying the trust property signed by the sailor, [or] [b]y operation of law."].) Merely agreeing to be bound by or referencing the internal rules of an outside organization in corporate bylaws does not rise to the level of a written trust instrument signed by the property owner, particularly in the absence of corporate member consent.

The U.S. Supreme Court decision in *Jones* does not overturn this California statutory law, nor does it federalize trust law by "requir[ing] enforcement of a hierarchical church's canon placing all property in trust for the general church," as Respondents argue. (DOB, p. 48.) In fact, while *Jones* commended the neutral principles approach for resolving church property disputes, the case was remanded to Georgia so that the state supreme court could clarify what Georgia law was. (*Jones*, 443 U.S. at 609-10.)

All *Jones* did was mention some ways the "parties" (plural) might be able to determine – consistent with state law – how local church property could be disposed of in the event of a divorce: "Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the *parties* can ensure, if *they* so desire, that the faction loyal to the hierarchical church will retain the church property." (*Jones*, 443 U.S. at 606.) Respondents misquote this language as saying "the church can take steps . . . to

ensure," which twists it from mutual agreement to unilateral fiat. (DOB, p. 48.)

The Court then gives a few examples of how the *parties* might be able to resolve a dispute: "*They* can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church." (*Jones,* 443 U.S. at 606 [emphasis added].) Nothing in *Jones* held that these steps would necessarily be lawful under state law, or constitutionally required under federal law. Nothing in *Jones* authorizes beneficiaries to create trusts by internal rule.

Whatever steps the parties have taken, *Jones* carefully left the final decision regarding enforceability to the States: "The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, *provided it is embodied in some legally cognizable form.*" (*Jones*, 443 U.S. at 606.) Among other requirements, in California trusts in real property are only "legally cognizable" if they are signed by the owner, are express, and in writing. (Probate Code §§ 15200, 15201, 15206.) Denominational rules alone are not "legally cognizable."

4. Under California's Statutes, There Is No Evidence, Much Less a Preponderance of Express Written Evidence, That St. Luke's Church Intended to Subject Its Property to Any Trust.

As discussed above, the trust Respondents seek must have been created by St. Luke's Church (Prob. Code § 15200(a)), with a properly manifested express intention (Prob. Code § 15201), with respect to identifiable, existing property (Prob. Code § 15202), and in a signed writing (Prob. Code § 15206). The undisputed evidence is that *no such steps* were ever taken.

5. If the "Neutral Principles" Approach Is to Remain Neutral, Church Rules Must Be Examined with a Secular Lens and "Deference" to Them Is Not Constitutionally Required.

Respondents would subordinate all of other "neutral principles" factors to their denominational trust rule, yet *Jones* instructed that states need not even credit church rules in resolving church property disputes: "The neutral-principles method, *at least as it has evolved in Georgia,* requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church." (*Jones,* 443 U.S. at 604; *Berthiaume v. McCormack* (N.H. 2006) 153 N.H. 239, 248, 891 A.2d 539 [to resolve a church property

dispute, a court must "first consider only secular documents such as trusts, deeds, and statutes. Only if these documents leave it unclear which party should prevail will we consider religious documents, such as church constitutions and by-laws. . . .") To the extent church documents are examined, "a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." (*Jones,* 443 U.S. at 604.)

Accordingly, if the one-paragraph Episcopal "trust" rule is examined in this case, there is no reason why Respondents should be given a pass from the Probate Code, a neutral and valid law of general applicability. (*North Coast Women's Care Med. Group, Inc.,* (2008) 44 Cal.4th at 1156 ["California's Unruh Civil Rights Act . . . is a valid and neutral law of general applicability" for which there is no religious exemption]; *Catholic Charities of Sacramento, Inc. v. Superior Ct.* (2004) 32 Cal.4th 527, 548 ["But the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."] [internal quotations omitted].)

These authorities illustrate why Respondents are wrong when they claim that refusal to give "binding legal effect" to the Episcopal Church's "Constitution and Canons" would run[] afoul of the first

Amendment" (DOB, p. 55.) Merely because a religious denomination passes a rule does not mean that the States must unthinkingly enforce it, especially when their own statutory law prescribes certain conditions for trusts in real property which the rule does not meet.

The cases cited by Respondents are far different than this case. In *Kedroff v. St. Nicholas Cathedral* (1952) 344 U.S. 94, the U.S. Supreme Court invalidated an act of the New York Legislature summarily wresting control of Russian Orthodox property from the Moscow-based denomination and awarding it to a breakaway American group. (*Id.* at 109-10.) Similarly, in *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, the Supreme

* * *

> number of essential facts ... There is no question in this case as to which body is the true Presbyterian church in Palm Springs Community Church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian church or the representative of UPCUSA in Palm Springs ... In truth, there is no existing religious or ecclesiastical controversy ... Community Church ended that controversy when it withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination.

(*Presbytery of Riverside*, 89 Cal.App.3d at 924.) The same situation exists here. St. Luke's Church does

not contend that it is an "Episcopal Parish," has no desire to be such a "Parish," and has amended its articles of incorporation to delete all references to being such a "Parish." (3 AA 516-518.) Respondents are free to decree whomever they wish is the authorized "Episcopal Parish" in La Crescenta, but this decree cannot be used to wrest control of a formerly affiliated corporation away from its lawful board and voting members.

B. St. Luke's Church Is Governed By Its Board and Voting Members.

Here, the reason why Respondents' purported "true church" determination has no effect is that under California law and its own bylaws, St. Luke's Church corporation is governed by a board elected by its voting members. Whether or not someone is a "true" Episcopalian or the corporation is a "true Parish" is irrelevant to its control and governance.

Corporations Code section 9140 provides that religious corporations are to have all the powers and rights of natural persons. (Corp. Code § 9140.) Section 9132 specifies that religious corporations may only be deemed "subordinate" to larger bodies such as denominations if their articles of incorporation expressly contain certain language, which the original articles of St. Luke's Church did not. (Corp. Code § 9132; 3 AA 510-14.) Section 9210(a) provides that religious corporations shall be managed by a board which *may not delegate away its management powers.*

(Corp. Code § 9210(a).) Section 9220(a) states that the corporate bylaws shall provide for the election and removal of directors. (Corp. Code § 9220(a).) Here it is undisputed that St. Luke's Church has, and for many years prior the dispute had, bylaws that provide for: (1) the issuance of voting memberships; and (2) the election of directors by the voting members. (3 AA 656; *see, e.g.*, 3 AA 684-87.)

The Diocese cannot swoop in at this point and, in hindsight, determine that some "true church" group is entitled to control St. Luke's Church. Otherwise, in every local church disaffiliation, the denomination could thwart the process and take the property through top-down decrees.[14] This flies in the face of the Legislature's intent, through the Corporations Code, to give religious corporations *all* of the rights of other corporations and of natural persons. (Corp. Code § 9140.) There is no reason why a denomination, as corporate outsider, should have any greater ability to affect the governance of a formerly-affiliated local

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[14] The Diocese's corporate representative admitted in deposition that contrary to the Complaint, Bishop J. Jon Bruno had not "appointed . . . a new vestry to conduct the affairs of St. Luke's for those faithful Episcopalians who wished to remain part of the Parish." (1 AA 8, ¶ 28; *Compare* 3 AA 561-62.) Thus, there are *no* "faithful Episcopalians" who are waiting in the wings to return to St. Luke's Church. A handful of disgruntled ex-members have become members of St. George's Episcopal Church in La Canada, where they are receiving the full ministrations of the Episcopal denomination. (3 AA 624-25.)

church than the Freemasons or Elks Club should be able to affect the life of a former member.

CONCLUSION

For the foregoing reasons, the Superior Court's Judgment for Respondents, entered July 26, 2007, should be reversed in its entirety, Appellants' motion for summary judgment should be granted, and the motions for summary judgment filed by Respondents should be denied.

DATED: December 15, 2008 PAYNE & FEARS LLP

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Attorneys for Defendants and Appellants THE REV. DR. RONALD W. JACKSON, ET AL.

CASE NO. S175401

SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICIA HUBER, ET AL.,
PLAINTIFFS AND RESPONDENTS,

v.

THE REV. DR. RONALD W. JACKSON, ET AL.,
DEFENDANTS AND ~~PETITIONERS~~ APPELLANTS.

PETITION FOR REVIEW

(Filed Aug. 11, 2009)

From a published decision of the Court of Appeal,
Fourth Appellate District, Division One
(Appeal No. D051669)

Los Angeles County Superior Court
(Case No. BC351287)
The Honorable John Shepard Wiley, Trial Judge

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* * *

ISSUES PRESENTED

1. Under neutral principles of law, are the statutory governance provisions of the Nonprofit Religious Corporation Law (Corp. Code §§ 9110, et seq.) trumped by the decrees of outside religious leaders, such that directors and voting members who are authorized by law to govern and manage a nonprofit religious corporation can be deprived of their offices by such decrees? This question involves a conflict between the present opinion (which answers "yes") and *Iglesia Evangelica Latina, Inc. v. Southern Pac. Latin Am. Dist.* (2009) 173 Cal.App.4th 420 (which answers "no").

2. Does the First Amendment to the United States Constitution, incorporated into the Fourteenth Amendment to the United States Constitution, permit state courts to endow religious denominations with a special ability to override the rights and powers of a separate religious corporation?

3. By ignoring the plain language of a property deed, which states that real property was conveyed "absolutely and free of any trust," to hold that the property was subject to an implied trust in favor of the grantor due to its status as a religious denomination, did the Court of Appeal violate the Establishment Clause of the First Amendment to the United States Constitution?

* * *

II. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONSTITUTIONALITY OF PERMITTING RELIGIOUS DENOMINATIONS TO OVERRIDE THE RIGHTS OF SEPARATE CORPORATIONS.

In *Episcopal Church Cases* (2009) 45 Cal.4th 467, this Court adopted, as most consistent with the First Amendment, the "neutral principles of law" approach for deciding church property disputes. Presumably, the same applies to church corporate *governance* disputes. (*See Iglesia Evangelica,* 173 Cal.App.4th at 439 [applying neutral principles of law to assumption of control over corporation].)

The present case squarely presents the question of whether "neutral principles of law" constitutionally permit a denomination or other outside affiliated organization to unilaterally replace directors (and indeed voting members) of a separate California corporation where there is no corporate bylaw and no statutory provision to that effect. Unlike *Episcopal*

Church Cases, the issue here is whether denominational policy, mandates, and loyalty can trump specific statutory provisions governing the election and replacement of directors.

No neutral legal principle (i.e., one that would apply to nonreligious entities) suggests that a civil court can disenfranchise corporate directors merely because they have policy differences with an outside entity that has no voting power within the corporation, or because they take steps to place important questions before the membership (including the question of whether to remain affiliated with the outside entity). If the Nonprofit Religious Corporation Law is to mean anything, it must mean that California Corporations Code and a church's own bylaws, not the decrees of an outside religious leader or organization, govern who its directors are.

This Court's intervention is necessary to determine if there are special judge-made principles that supervene the Nonprofit Religious Corporation Law to afford special rights to religious denominations. If such special principles favoring religious denominations over and against the statutory law do exist, additional questions arise: Do they violate the First Amendment's Establishment Clause? Do they infringe upon the Free Exercise Clause by granting an outside entity veto power over statutory law and governing corporate documents that would otherwise allow the members of a religious corporation to govern the corporation? The rulings in the Opinion certainly appear to do so, providing greater rights to

an outside religious denomination (which has *no voting power* within St. Luke's) than they do to the very directors and members of that Corporation (who do have such power). These important questions should be resolved by this Court.

III. THIS COURT SHOULD GRANT REVIEW TO RESOLVE WHETHER THE CONSTITUTION PERMITS A COURT TO IGNORE EXPRESS LANGUAGE IN A DEED IN FAVOR OF A RELIGIOUS DENOMINATION'S "TRUST RULE."

Although it purported to apply "neutral principles of law," this Court's decision in *Episcopal Church Cases* in fact applied a not-so-neutral principle affording religious denominations favorable, unilateral rights to create trust interests in property they do not own. (*Episcopal Church Cases*, 45 Cal.4th at 495 [Kennard, J., dissenting].)

A petition for certiorari with the United States Supreme Court is currently pending. (No. 08-1579.) Petitioners recognize that, under principles of stare decisis, this Court is hesitant to revisit its recent decision in *Episcopal Church Cases*. Nonetheless, Petitioners believe that *Episcopal Church Cases* is incorrectly decided, and by interpreting Corporations Code section 9142(c) to empower "superior religious bod[ies] [and] general church[es]" to create trusts in property they do not own simply by passing an internal rule, the decision violates the Establishment Clause (by preferring denominations) and the Free

Exercise Clause (by penalizing the owner of property with a loss of property upon a change of religious affiliation).

The factual context here makes the point even more strongly than in *Episcopal Church Cases*, and at a minimum points to a misapplication of this Court's neutral principles holding. In *Episcopal Church Cases,* the deeds to the property of the local religious corporation did not mention any trust interest in favor of the denomination (a silence that Petitioners nonetheless believe it was wrong to interpret as allowing future, informally imposed, trusts). However, here, by contrast, the deed to a large part of the real property of St. Luke's expressly renounces any superseding denominational trust. No neutral principle of California law permits the unilateral creation of a trust over real property by a party which has previously renounced any such trust (in the words of the deed here, "absolutely") without the express agreement of the burdened party. To the extent that this Court chooses not to revisit *Episcopal Church Cases,* Petitioners reserve the right to challenge the correctness of that decision in the United States Supreme Court.

CONCLUSION

For the foregoing reasons, this Court should grant review to whether a religious denomination may supersede the Corporations Code and corporate

bylaws to seize control of an affiliated (but separate) California religious corporation.

DATED: August 7, 2009

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By: /s/ Eric C. Sohlgren/DFL
Attorneys for Petitioners
THE REV. DR. RONALD W. JACKSON, ET AL.

GRANT DEED CORPORATION.

THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES, (A Corporation Sole) organized under the laws of the State *of the xxx State* of California, with its principal place of business at Los Angeles, California, in consideration of Ten ($10.00) Dollars, to it in hand paid, the receipt of which is hereby acknowledged, does hereby GRANT TO THE RECTOR, WARDENS AND VESTRYMEN OF ST. LUKE'S OF THE MOUNTAINS EPISCOPAL CHURCH IN LA CRESCENTA, A CORPORATION, all that property in the County of Los Angeles, State of California, described as: Lots 20 and 21, Tract Bill, *Assessors* Book of Maps, No. 454, Page 26, Official Records of Los Angeles County, California. Subject to conditions, restrictions, reservations, rights of way, encumbrances and taxes of record. The Grantee, by the acceptance and recordation of this deed, assumes and agrees to pay the encumbrances against the property hereby conveyed. Grantor declares that this deed is made for the purpose of vesting legal title, now held by him in trust for the Grantee, in the Grantee absolutely and free of any trust.

IN WITNESS WHEREOF, the above mentioned corporation has xxx *has* executed this deed and xxx has hereunto affixed its corporate seal, this 9th day of August 1940.

(SEAL) THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES (A CORPORATION SOLE)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,)SS:

On this 9th day of August 1940, before me, – a Notary Public in and for said County, personally appeared W. Bertrand Stevens, known to me to be the Bishop of the Protestant Episcopal Church in Los Angeles, xxx the corporation sole that executed the within instrument, xxx and acknowledged to me that such corporation sole executed the same.

WITNESS my hand an official seal.

(SEAL) C.M. Gair, Notary Public in and for said County and State.

#1001. Copy of original, recorded at request of Grantee, Aug 10, 1940, 10:47 A.M.

Copyist #99 Compared Mame B. Beatty, County Recorder, By /s/ J. Witham (7) Deputy.
$1.00-4-P.